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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 275

**D. T. CURBIN, S. M. CUTTS, AND H. A. AVERETT,
DOING BUSINESS AS FIMMING WAREHOUSE,
OXFORD, NORTH CAROLINA, ET AL., PETI-
TIONERS,**

vs.

**HENRY A. WALLACE, SECRETARY OF AGRICUL-
TURE FOR THE UNITED STATES, ET AL.**

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FOURTH CIRCUIT**

PETITION FOR CERTIORARI FILED AUGUST 15, 1938.

CERTIORARI GRANTED OCTOBER 10, 1938.

ants are advised and believe, purports to derive its authority under and from Article 1, Section 9, Sub-Section 3, of the Constitution of the United States, conferring upon Congress the power to regulate commerce with foreign nations and among the several States; that said Tobacco Inspection Act, purporting to have been enacted under the aforesaid provisions of the Constitution of the United States, is unconstitutional and void for the following reasons, namely:

(a) That said Act exceeds the powers granted to the Congress of the United States by the Constitution of the United States for that the production, handling and marketing of tobacco on the warehouse floors of complainants prior to its sale does not constitute interstate commerce nor does it in any wise affect interstate commerce within the meaning of the Constitution, nor does it fall within the meaning and purpose of the "General Welfare Clause" of the Constitution of the United States.

(b) That agricultural production, including the production of flue cured tobacco and the offering for sale of such tobacco by the patrons of complainants and the manner in which the same is offered for sale, is beyond the power of Congress to control and regulate and such control is reserved by the Constitution of the United States to the State of North Carolina.

(c) That said Act violates the Fifth Amendment to the Constitution of the United States, which provides that no person shall be deprived of life, liberty or property without due process of law, for that the Act upon (5) its face indicates that it was not enacted for the purpose of regulating and controlling interstate commerce, but for the purpose of regulating and controlling the growing, handling and marketing of tobacco within the several States; that by said Act Congress undertakes to exercise a power not vested in it by the Constitution of the United States, but reserved to and reposed in the people of the several States.

(d) That said Act is unconstitutional for that only such tobacco, which is offered for sale at auction upon the Oxford Tobacco Market, is required to be submitted

to government graders for inspection and grading prior to its sale; that tobacco sold through methods other than the auction system is not required to be inspected and graded; that tobacco offered for sale at auction upon all of the markets within the State of North Carolina other than the markets conducted at Farmville, Goldsboro and Oxford, is not required to be submitted to government graders for inspection and grading; that the establishment by the Department of Agriculture of the United States of the requirement for the inspection and grading of tobacco sold at auction on the warehouse floors in Farmville, Goldsboro and Oxford is discriminatory, unconstitutional and invalid, and in violation of the Fifth Amendment to the Constitution of the United States, for that, as hereinbefore alleged, the tobacco sold at auction on all other markets within the State of North Carolina is sold without grading and inspection under the supervision and control of the Department of Agriculture of the United States.

(e) That as complainants are informed, believe and so allege there are not less than fifty markets established and being operated within the State of North Carolina for the sale of tobacco at auction, upon which a large quantity of tobacco will be offered for sale at auction; that the producers of tobacco offering their tobacco for sale on markets other than Farmville, Goldsboro and Oxford, which markets have been designated by the Secretary of Agriculture of the United States as markets where tobacco must be inspected, graded and certified under the provisions of said Tobacco Inspection Act, are not required or compelled to submit their tobacco prior to its sale to such inspection, grading and certification, and the provisions of said Act and the designation, pursuant to the purported authority of said Act by the Secretary of Agriculture of the United States, of the markets at Farmville, Goldsboro and Oxford, constitutes an arbitrary and discriminatory act on the part of the Congress of the United States and the Secretary of the Department of Agriculture of the United States, purporting to act pursuant to authority vested in him by said Tobacco Inspection Act, and places an unusual and not a general burden upon those persons, offering their tobacco for sale upon the aforesaid markets, and upon the operators of warehouses on said

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TRANSCRIPT OF RECORD

STYLE AND TERM OF COURT.

THE UNITED STATES OF AMERICA,
Eastern District of North Carolina, to-wit:

At a District Court of the United States for the Eastern District of North Carolina, begun and held at the Court House in the City of Elizabeth City, on the third Monday in February, being the fifteenth day of February in the year of our Lord one thousand, nine hundred and thirty-seven.

Present: The Honorable I. M. Meekins, District Judge for the Eastern District of North Carolina.

Among other were the following proceedings, to-wit:

D. T. Currin, S. M. Cutts, and H. A. Averett, doing business as Fleming Warehouse, Oxford, North Carolina, H. L. Thomasson, T. B. Williams and J. C. Adeock, doing business as Mangum Warehouse, Oxford, North Carolina, et al., Complainants,

vs.

No. 663
In Equity.

Henry A. Wallace, Secretary of Agriculture for the United States, and J. O. Carr, United States District Attorney for the Eastern District of North Carolina, et al., Defendants.

BILL OF COMPLAINT.

(2)

Filed Oct. 24, 1936

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF NORTH CAROLINA,
IN EQUITY.

D. T. Currin, S. M. Cutts, and H. A. Averett, doing business as Fleming Warehouse, Oxford, N. C., H. L. Thomasson, T. B. Williams and J. C. Adecock, doing business as Mangum Warehouse, Oxford, N. C., C. R. Watkins and J. R. Watkins, doing business as the Johnson Warehouse, Oxford, N. C., and D. F. Currin, doing business as Farmers Warehouse, Oxford, N. C., Complainants,

vs.

Henry A. Wallace, Secretary of Agriculture for the United States, and J. O. Carr, United States District Attorney for the Eastern District of North Carolina, and W. R. Wilson, agent and representative of the Secretary of Agriculture of the United States and charge of the grading of tobacco upon the Oxford Tobacco Market.

To the Honorable Judge of the District Court of the United States for the Eastern District of North Carolina:

The complainants, D. T. Currin, S. M. Cutts and H. A. Averett, doing business as Fleming Warehouse, Oxford, N. C., H. L. Thomasson, T. B. Williams and J. C. Adecock, doing business as Mangum Warehouse, Oxford, N. C., C. R. Watkins and J. R. Watkins doing business as Johnson Warehouse, Oxford, N. C., and D. F. Currin doing business as Farmers Warehouse, Oxford, N. C.

complaining of the defendants for a first cause of action allege and say:

1. That the complainants are tobacco warehousemen at present engaged in conducting warehouses in the Town of Oxford, N. C., for the sale at auction of tobacco belonging to their patrons.

2. That the defendant, Henry A. Wallace, is the duly appointed, qualified and acting Secretary of Agriculture of the United States, with official residence in Washington, D. C., that under and by virtue of an Act of Congress, approved August 23, 1935, and commonly known as the Tobacco Inspection Act (Public—No. 314—74th. Congress, H. R. 8026), the Secretary of Agriculture is charged with the enforcement of the provisions thereof. That the defendant, J. O. Carr, is United States District Attorney for the Eastern District of North Carolina, whose duty it will be or may become to prosecute the complainants for violations of the aforesaid Tobacco Inspection Act; that as complainants are informed, believe and so allege, the defendant, W. R. Wilson, is connected with the Department of Agriculture of the United States; and as agent and representative of the Secretary of Agriculture of the United States is at the head of and in charge of the office in the Town of Oxford established by the Department of Agriculture of the United States, and exercises supervision and control over the individuals employed by the Department of Agriculture of the United States now engaged in grading tobacco upon the warehouse floors of the complainants. A copy of said Tobacco Inspection Act, for the purpose of attack, is hereto attached marked Exhibit A and is hereby made a part of this Bill of Complaint.

3. That there exists between the complainants and the defendants herein an actual controversy and the complainants have instituted this action for the purpose of having the aforesaid Tobacco Inspection Act as above entitled declared unconstitutional, for that the same is in violation of the organic law of the land, in the specific respects hereinafter particularly set forth.

4. That Sections 5 and 8 of the aforesaid Tobacco Inspection Act in particular attempt to regulate, direct and

control the handling, marketing and sale of tobacco produced harvested, handled and sold within the borders of the State of North Carolina.

5. That since the opening of the tobacco market in the Town of Oxford, N. C., for the sale of the crop of tobacco made and harvested during the year 1936 the Department of Agriculture of the United States has maintained in the Town of Oxford, North Carolina, a force of graders, who at the direction of the Department of Agriculture of the United States have daily graded according to grades adopted by the Department of Agriculture the tobacco offered for sale by the patrons of complainants upon the warehouse floors of complainants, all of which has been done pursuant to the purported authority contained in the aforesaid Tobacco Inspection Act, and without the consent and approval of complainants.

6. That Section 12 of the aforesaid Tobacco Inspection Act provides that any person violating any of the provisions of Sections 5 and 10 of said Act shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than one thousand dollars or imprisoned not more than one year, or both. That complainants have been forced to submit to the grading by graders employed by the Department of Agriculture of the United States of tobacco offered for sale by the patrons of complainants upon the floors of complainants because of the aforesaid Section 12 of the said Act and the probability of prosecution for a violation by complainants of the terms of said Act.

7. That these complainants are engaged in the business of offering for sale leaf tobacco in an unmanufactured state at auction to the highest bidders on warehouse floors in the Town of Oxford, North Carolina within the borders of the State of North Carolina; that complainants for a consideration fixed by law, which consideration is paid by the sellers, provide for the sellers of tobacco warehouse floor space where their patrons, growers of tobacco, display their products to prospective purchasers and where it is sold at auction that for said consideration these complainants provide the buildings, floor space, labor for handling the tobacco

prior to its sale, the bookkeeping force and other employees necessary and incident to the sale of tobacco under the auction method of sale; that these complainants conduct the sales of tobacco for their patrons on (4) complainants' warehouse floors, and the possession of tobacco so sold vests immediately in the buyers at said sale, and such tobacco is removed from the warehouse floors of these complainants by the purchasers of such tobacco.

8. That all services rendered and all duties performed by these complainants prior to the delivery of tobacco sold by these complainants for their patrons and all sales of such tobacco are strictly intrastate transactions, and are not affected with or by a public interest; that the production, handling, grading and marketing of leaf tobacco prior to its sale and shipment in interstate commerce is a local activity carried on entirely within the borders of the State of North Carolina; that such an activity is in no sense interstate or connected in any way with interstate commerce until such tobacco passes into the hands and possession of the buyers thereof; and such tobacco does not enter into the current of interstate commerce prior to its sale at auction upon the warehouse floors of these complainants.

9. That the tobacco offered for sale upon the warehouse floors of these complainants for their patrons is raised from seed produced, grown and planted entirely within the borders of the State of North Carolina, and the duties performed by these complainants preliminary to and in offering said tobacco for sale on the warehouse floors of these complainants do not constitute a burden upon interstate commerce, so as to bring the activities of these complainants within the meaning of the commerce clause of the Constitution of the United States and within the power of the Congress of the United States to regulate; that the activities engaged in by these complainants in the marketing and selling of tobacco for their patrons are strictly intrastate in their nature and character, the right to regulate which is reserved to and reposed in the people of the State of North Carolina.

10. That said Tobacco Inspection Act, as complain-

markets, and particularly upon complainants, for that as complainants are informed, believe and so allege only a small part of the tobacco produced and sold in North Carolina will be offered for sale and sold upon the aforesaid three markets; that the sellers and purchasers of tobacco on markets other than the aforesaid markets are granted by said Act and under regulations promulgated by the Secretary of Agriculture pursuant to said Act special privileges and immunities not accorded these complainants, and by reason thereof said Act supervenes and precludes the enjoyment by complainants of the equal rights, to which they are entitled and which are granted to them by the Constitution of the United States.

(f) That said Tobacco Inspection Act unlawfully (6) delegates to the Secretary of Agriculture legislative powers and gives said Secretary of Agriculture unlimited discretion in designating auction markets whereon tobacco sold moves in commerce; that Section 5 of said Tobacco Inspection Act delegates or undertakes to delegate to the Secretary of Agriculture of the United States legislative powers, which belong to Congress and not to the Secretary of Agriculture.

11. That there is no power or authority vested in the Congress of the United States under the Constitution of the United States to compel complainants to submit tobacco entrusted to them by their patrons to be sold at auction to a government official to be inspected, graded and certified prior to offering such tobacco for sale; that the enforcement of the aforesaid Tobacco Inspection Act, together with the rules and regulations promulgated by the Secretary of Agriculture of the United States, pursuant to said Act, is working upon these complainants an unusual hardship and an irreparable injury and damage for which there exists at law no adequate remedy; that as hereinbefore alleged, complainants operate warehouses in the Town of Oxford, North Carolina, for the sale at auction of tobacco for their patrons, in competition with others engaged in a like enterprise both on the Oxford market and on other markets located in North Carolina; that many of the patrons of complainants are unalterably opposed to the inspection and grading of their tobacco by government officials and many of the patrons of complainants are selling their

tobacco elsewhere than on the floors of the complainants for the reason solely that such patrons are opposed to government inspection and grading; that complainants are daily suffering loss of business and patronage in consequence of the enforcement of said Tobacco Inspection Act, for which loss and damage there is at law no adequate remedy, and the further enforcement of said Act will in its effect and operation amount to a confiscation of the property rights of complainants in violation of the Constitution of the United States.

12. That in preparation for the sale by complainants on the floors of complainants of tobacco of their patrons such tobacco is arranged in a careful and orderly manner, so as to make it as attractive as possible to the buyers of such tobacco, and the disturbance of such tobacco by the government graders for the purpose of inspecting and grading such tobacco not only places upon complainants an additional burden in re-arranging such tobacco, but such tobacco by such pulling and sampling on the part of the government graders is damaged and the same does not bring as satisfactory price as if it were unmolested and undisturbed, and inasmuch as complainants receive for their services a commission on such tobacco such commissions are diminished by any act, which reduces the value of such tobacco; that said Tobacco Inspection Act and the rules and regulations promulgated by the Secretary of Agriculture pursuant to said Act apply only to the tobacco markets of Farmville, Goldsboro and Oxford in the State of North Carolina, and on all other markets in the State of North Carolina tobacco may be marketed and sold without government grading and inspection.

13. That complainants are in no sense of the word engaged in interstate commerce and the tobacco sold by complainants for the patrons of complainants does not enter into interstate commerce until after complainants have completed and discharged every act and duty in (7) regard to such tobacco, which complainants are called upon to do and perform; that such inspection and grading is all done and performed after such tobacco is placed upon the warehouse floors of complainants and prior to the sale at auction of such tobacco, and every act performed by the government graders pursuant to

said Tobacco Inspection Act and the rules and regulations promulgated by the Secretary of Agriculture of the United States is performed prior to the time that such tobacco enters the current of interstate commerce.

14. That complainants and the patrons of complainants have been threatened with indictment if they refused to permit the inspection and grading of tobacco on the floors of complainants by the government graders, and said complainants are by such threats prevented from using and enjoying their own property free from improper and unlawful molestation and interference by the officials of the Department of Agriculture of the United States.

15. That the aforesaid Act is in conflict with the Constitution of the United States in the respects hereinbefore pointed out, and these complainants are advised and believe that they are entitled herein to a restraining order, restraining upon the warehouse floors of complainants the enforcement of the provisions of said Act and the rules and regulations promulgated thereunder; that they are entitled to an injunction preventing the defendant, J. O. Carr, United States District Attorney for the Eastern District of North Carolina, from instigating, conducting or participating in any prosecution of these complainants for their failure to comply with the provisions of said Tobacco Inspection Act and the rules and regulations promulgated thereunder; that there exists no plain and complete remedy at law for that if these complainants be indicted and await the judgment of the Courts for a violation of Section 12 of said Tobacco Inspection Act, and in the meantime are not permitted to sell tobacco upon their warehouse floors, until such tobacco has been graded inspected and certified by government graders, their businesses will be seriously injured, even if not completely ruined; that a delay in ascertaining and determining the rights of complainants will result in their serious loss and damage for that the season for the sale of tobacco is limited, and the rights of complainants have been, are now and will continue to be violated unless complainants are protected from the unlawful acts hereinbefore complained of and the continuation of such unlawful acts by persons pur-

porting to derive authority from said Tobacco Inspection Act, and the rules and regulations promulgated by the Secretary of Agriculture of the United States; that injuries, which will inevitably flow from the performance by the government graders, acting under authority of the Department of Agriculture of the United States, are and will be irremediable unless relief be granted by this Court under its equitable jurisdiction and powers.

16. That by reason of the matters and things hereinbefore alleged an emergency has arisen, which entitles these complainants, as they are advised and believe, to equitable relief pending the hearing of this cause upon its merits, and they are, as they are advised and believe, entitled to have this Court pending such hearing issue a temporary restraining order, restraining the defendants from doing or performing any act now being performed pursuant to the purported authority of the aforesaid Tobacco Inspection Act insofar as these complainants are concerned and insofar as the warehouse floors and property of these complainants are concerned.

AND FOR A SECOND AND FURTHER CAUSE OF ACTION THESE COMPLAINANTS ALLEGE AND SAY:

1. That they reiterate, reaffirm and re-allege, and expressly do not waive or abandon, each and every allegation herein set forth and alleged in their first cause of action.

2. That if the Court should hold as a matter of law that the aforesaid Tobacco Inspection Act, of which complainants complain in their first cause of action, is constitutional and a valid exercise by Congress of its powers under the Constitution, then complainants allege and say:

(a) That the said Tobacco Inspection Act hereinbefore referred to among other and further things unlawful and unconstitutional in their nature provides that the Secretary of Agriculture of the United States may designate any market on which tobacco is sold at auction as a market upon which all tobacco sold at auction shall be first inspected and graded by graders employed by

and acceptable to the Secretary of Agriculture of the United States and by the Department of Agriculture of the United States.

(b) That Section 5 of said Act, a copy of which is hereto attached marked Exhibit A, provides a method to be pursued and followed by the Secretary of Agriculture of the United States in designating tobacco markets on which tobacco shall be first inspected and graded.

(c) That as complainants are informed a purported referendum was conducted during the spring or summer of 1936 by or under the authority of the Secretary of the Agriculture of the United States among the patrons of the Oxford Tobacco Market, some of whom were and are patrons of complainants, for the purpose of determining whether or not the tobacco market in Oxford should be designated as a market for the compulsory inspection and grading of tobacco before sale during the marketing season of 1936-37.

(d) That as complainants are informed, believe and so allege the referendum so conducted did not convey to the patrons of the Oxford Tobacco market and particularly to the patrons of complainants sufficient information to enable them to vote upon the question of compulsory grading of tobacco upon the Oxford market, but merely solicited from such patrons as received such referendum an expression as to whether or not they favored free inspection of tobacco, and these complainants allege that the referendum as conducted did not afford to the patrons of these complainants an opportunity to express themselves intelligently upon the question of whether or not there should be government grading of tobacco in Oxford during the marketing season of 1936-37.

(e) That in the conduct of the purported referendum, as these complainants are informed and so allege, a large number of the patrons of these complainants, who, under the express provisions of said Tobacco Inspection Act, were entitled to participate in said referendum, were not permitted to participate for the reason that such referendum was submitted only to growers of tobacco, who had

signed contracts governing the production of tobacco, and by such referendum no tenant farmer and no share-(9) cropper engaged in the production of tobacco was afforded an opportunity to participate in said referendum for the reason that they were not signers of contracts with the Department of Agriculture of the United States, controlling the production of tobacco.

(f) That these complainants are informed, believe and so allege that the aforesaid referendum conducted in the manner aforesaid was not conducted according to the expressed terms and provisions of the aforesaid Tobacco Inspection Act, and such referendum was and is contrary to public policy.

(g) That for the reasons hereinbefore alleged, these complainants aver that no referendum has been held according to the provisions of Section 5 of said Tobacco Inspection Act, and that therefore the Secretary of Agriculture was and is without power and authority under said Act to designate the Oxford Tobacco Market as a market on which tobacco offered for sale at auction must first be inspected and graded by government graders; that the action of the Secretary of Agriculture of the United States in designating the Oxford Tobacco market as a market on which tobacco must be inspected and graded by government graders before the sale of such tobacco is null and void for that said referendum was not conducted according to the provisions of said Tobacco Inspection Act, and for that the patrons of said market have not been afforded an opportunity to express themselves upon the question involved, and for that further all of the patrons of said market were not represented by said referendum and have had no opportunity to vote upon the same.

3. That by reason of the aforesaid unlawful and unconstitutional election and referendum and by reason of the aforesaid invalid designation and regulation by the Secretary of Agriculture promulgated as aforesaid and based on said invalid referendum the Secretary of Agriculture, or the Department of Agriculture of the United States, has appointed and designated certain inspectors or graders, who, since the opening of the tobacco mar-

ket in Oxford for the sale of the 1936 crop of tobacco, have inspected and graded the tobacco sold by complainants for their patrons, and as complainants are informed, believe and so allege, said graders will continue to inspect and grade tobacco offered for sale on the floors of the complainants and prosecute complainants if complainants undertake to sell and do sell for their patrons tobacco, which has not been inspected and graded, unless this Court affords to complainants the relief to which complainants believe and allege themselves to be entitled; that the defendant, W. R. Wilson, is, as complainants are informed, believe and so allege, stationed in Oxford, and as the representative and agent of the Secretary of Agriculture and as an employee of the Department of Agriculture of the United States, exercises authority and control over the graders placed on the Oxford Tobacco market by the Secretary of Agriculture and the Department of Agriculture of the United States, which said graders have in the past, are now and unless in the future are prevented from doing so, will continue to inspect and grade tobacco offered for sale by complainants for their patrons, all of which is causing irreparable loss and damage to complainants for the relief of which there is no adequate remedy at law.

4. That the aforesaid Tobacco Inspection Act, the rules and regulations promulgated by the Secretary of Agriculture of the United States, pursuant thereto, and the enforcement of the same, are all in violation of the Constitutional rights of complainant for that the Congress of the United States neither had nor has the power or authority to pass legislation regulating the manner in which complainants shall use and enjoy their own property and conduct their own businesses unless such regulation were uniform and general in its nature and application and applied alike throughout the State of North Carolina to all persons engaged in business similar to the business in which complainants are engaged, and said Tobacco Inspection Act is therefore invalid and void; that as complainants are advised the application and enforcement of the aforesaid Tobacco Inspection Act and the rules and regulations promulgated by the Secretary of Agriculture of the United States deals with an agricultural product, which at all times has been and is up to and including the time of compulsory grading of

the same by government graders intrastate in its nature and in no wise a part or connected with interstate commerce.

5. That complainants have never been afforded an opportunity to express their willingness or unwillingness to the inspection and grading of tobacco offered for sale by them for their patrons, but complainants because of the provisions of said Tobacco Inspection Act are required to inform their patrons that tobacco offered for sale on their warehouse floors must be inspected and graded by government graders before it is sold, with the result that not infrequently patrons of complainants have refused to permit their tobacco to be inspected and graded and have been prevented by the operation of said Tobacco Inspection Act from selling their tobacco on the floors of complainants, from all of which complainants have suffered and will continue to suffer great loss and damage unless equitable relief is granted by this Court.

6. That for the reasons and causes hereinbefore alleged the said Tobacco Inspection Act is unconstitutional and invalid and the enforcement of the same and of the rules and regulations promulgated thereunder by the Secretary of Agriculture of the United States are improper and unlawful.

7. That for the reasons and causes hereinbefore alleged, complainants allege that they are suffering and sustaining irremediable loss and damage and are being prevented from making the use of their own property in the conduct of their own businesses that other persons engaged in similar businesses elsewhere in North Carolina, and allege further that if this Court does not issue a restraining order, restraining the defendants from the enforcement of the aforesaid Tobacco Inspection Act and the rules and regulations promulgated by the Secretary of Agriculture thereunder, these complainants will suffer and will continue to suffer serious loss and damage for the relief of which there is no adequate remedy at law.

WHEREFORE, complainants pray the Court upon the first cause of action:

16 HENRY A. WALLACE, SECRETARY, ET AL., APPELLANTS,

1. That said Tobacco Inspection Act be declared unconstitutional and void.

2. That the Court restrain the defendants from the enforcement of said Tobacco Inspection Act and all rules and regulations promulgated thereunder.

3. That pending the final hearing and determination (11) of this cause upon its merits the Court issue a temporary restraining order, restraining the defendants from enforcing said Act and said rules and regulations promulgated thereunder.

4. That process issue forthwith to the defendants herein named, together, with a copy of this Bill of Complaint, requiring them to appear at a time and place named therein to show cause, if any they have, why the relief demanded by the complainants should not be granted.

5. For such other and further relief as to the Court may seem necessary and property and the nature of the case demands.

AND the complainants upon their second cause of action pray the Court:

1. That the referendum referred to in this Bill of Complaint be declared void.

2. That the rules and regulations promulgated by the Secretary of Agriculture and based upon such void referendum be declared null and void.

3. That the defendants be perpetually restrained and enjoined from the enforcement of the provisions of said Tobacco Inspection Act and the rules and regulations promulgated thereunder based upon said void referendum.

4. That pending the hearing of this cause upon its merits the Court issue by reason of the emergency alleged herein a temporary restraining order restraining

the defendants from enforcing the rules and regulations promulgated under said Tobacco Inspection Act.

5. For such other and further relief as may be necessary and proper and the nature of the case demands.

D. T. Currin, S. M. Cutts and H. A. Averett, doing business as Fleming Warehouse, Oxford, N. C.,
By S. M. CUTTS.

H. L. Thomasson, T. B. Williams, and J. C. Adcock, doing business as Mangum Warehouse, Oxford, N. C.,
By J. C. ADCOCK.

C. R. Watkins and J. R. Watkins, doing business as Johnson Warehouse, Oxford, N. C.,
By C. R. WATKINS.

D. F. Currin, doing business as Farmers Warehouse, Oxford, N. C.,
By D. F. CURRIN.

ROYSTER & ROYSTER,
Attorneys for complainants,
By J. P. ROYSTER.

NORTH CAROLINA,
Granville County:

Personally appeared before me S. M. Cutts, who, being first duly sworn, says that he is a member of the copartnership of Thomasson, Currin, Cutts and Averett, doing business as Fleming Warehouse, Oxford, N. C., and is one of the complainants in the above entitled action; that he has read the foregoing and hereto annexed Bill of Complaint; that the same is true of his own knowledge, except as to matters and things therein alleged up-

18 HENRY A. WALLACE, SECRETARY, ET AL., APPELLANTS,
on information and belief, and that as to such he verily
believes it to be true.

S. M. CUTTS.

Subscribed and sworn to before me this the 24th day
of October, 1936.

LENA JONES,
(Notary Seal) Notary Public.

My coms. expires 1/20/38.

(13)

EXHIBIT A.**[PUBLIC—No. 314—74TH CONGRESS]****[H. R. 8026]****AN ACT**

To establish and promote the use of standards of classification for tobacco, to provide and maintain an official tobacco inspection service, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That when used in this Act—

(a) "Person" includes partnerships, associations, and corporations, as well as individuals.

(b) "Secretary" means the Secretary of Agriculture of the United States.

(c) "Inspector" means any person employed, licensed, or authorized by the Secretary to determine and certify the type, grade, condition, or other characteristics of tobacco.

(d) "Sampler" means any person employed, licensed, or authorized by the Secretary to select, tag, and seal official samples of tobacco.

(e) "Weigher" means any person employed, licensed, or authorized by the Secretary to weigh and certify the weight of tobacco.

(f) "Tobacco" means tobacco in its unmanufactured form.

(g) "Auction market" means a market or place to which tobacco is delivered by the producers thereof, or their agents, for sale at auction through a warehouseman or commission merchant.

(h) Words in the singular form shall be deemed to import the plural form when necessary.

(i) "Commerce" means commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof; or within any Territory or possession, or the District of Columbia. For the purposes of this Act (but not in any wise limiting the foregoing definition) a transaction in respect to tobacco shall be considered to be in commerce if such tobacco is part of that current of commerce usual in the tobacco industry whereby tobacco or products manufactured therefrom are sent from one State with the expectation that they will end their transit, after purchase, in another, including, in addition to cases within the above general description, all cases where purchase or sale is either for shipment to another State or for manufacture within the State and the shipment outside the State of the products resulting from such manufacture. Tobacco normally in such current of commerce shall not be considered out of such current through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this Act. For the purpose of this paragraph the word "State" includes Territory, the District of Columbia, possession of the United States, and foreign nations.

SEC. 2. That transactions in tobacco involving the sale thereof at auction as commonly conducted at auction markets are affected with a public interest; that such transactions are carried on by tobacco producers generally and by persons engaged in the business of buying and selling tobacco in commerce; that the classification of tobacco according to type, grade, and other characteristics affects the prices received therefor by producers; that without uniform standards of classification and inspection the evaluation of tobacco is susceptible to speculation, manipulation, and control, and unreasonable fluctuations in prices and quality determinations occur which are detrimental to producers and persons handling tobacco in commerce; that such fluctuations constitute a burden upon commerce and make the use of uniform standards of classification and inspection imperative for the protection of producers and others engaged in commerce and the public interest therein.

SEC. 3. That the Secretary is authorized to investigate the sorting, handling, conditioning, inspection, and marketing of tobacco from time to time, and to establish standards for tobacco by which its type, grade, size, condition, or other characteristics may be determined, which standards shall be the official standards of the United States, and shall become effective immediately or upon a date specified by the Secretary: *Provided*, That the Secretary may issue tentative standards for tobacco prior to the establishment of official standards therefor, and he may modify any standards established under authority of this Act whenever, in his judgment, such action is advisable.

SEC. 4. That the Secretary is authorized to demonstrate the official standards; to prepare and distribute, upon request, samples, illustrations, or sets thereof; and to make reasonable charges therefor: *Provided*, That in no event shall charges be in excess of the cost of said samples, illustrations, and services so rendered.

SEC. 5. That the Secretary is authorized to designate those auction markets where tobacco bought and sold thereon at auction, or the products customarily manufactured therefrom, moves in commerce. Before any market is designated by the Secretary under this section he shall determine by referendum the desire of tobacco growers who sold tobacco at auction on such market during the preceding marketing season. The Secretary may at his discretion hold one referendum for two or more markets or for all markets in a type area. No market or group of markets shall be designated by the Secretary unless two-thirds of the growers voting favor it. The Secretary shall have access to the tobacco records of the Collector of Internal Revenue and of the several collectors of internal revenue for the purpose of obtaining the names and addresses of growers who sold tobacco on any auction market, and the Secretary shall determine from said records the eligibility of such grower to vote in such referendum, and no grower shall be eligible to vote in more than one referendum. After public notice of not less than thirty days that any auction market has been so designated by the Secretary, no tobacco shall be offered for sale at auction on such market until it shall have been inspected and certified by an authorized representative of the Secretary according to the standards established under this Act, except that the Secretary may temporarily suspend the requirement of inspection and certifica-

tion at any designated market whenever he finds it impracticable to provide for such inspection and certification because competent inspectors are not obtainable or because the quantity of tobacco available for inspection is insufficient to justify the cost of such service: *Provided*, That, in the event competent inspectors are not available, or for other reasons, the Secretary is unable to provide for such inspection and certification at all auction markets within a type area, he shall first designate those auction markets where the greatest number of growers may be served with the facilities available to him. No fee or charge shall be imposed or collected for inspection or certification under this section at any designated auction market. Nothing contained in this Act shall be construed to prevent transactions in tobacco at markets not designated by the Secretary or at designated markets where the Secretary has suspended the requirement of inspection or to authorize the Secretary to close any market.

SEC. 6. That the Secretary, independently or in cooperation with other branches of the Government, State agencies, or persons, whether operating in one or more jurisdictions, is authorized to employ and/or license competent persons as samplers to take official samples of tobacco, or as weighers to weigh and certify the weight of tobacco, or as inspectors of tobacco to determine and certify, upon the request of the owner or other financially interested person, the type, grade, weight, condition, and/or such other facts as the Secretary may deem necessary.

The Secretary is authorized to fix and collect such fees or charges in the administration of this section as he may deem reasonable, and the moneys collected, except as provided in this section, shall be deposited in the Treasury of the United States to the credit of miscellaneous receipts. Fees or charges collected under an agreement with a State, municipality, or person, or by an individual licensed to inspect or weigh or sample tobacco under this Act, may be disposed of in accordance with the terms of such agreement or license. Charges for expenses for travel and subsistence incurred by inspectors or weighers or samplers employed by the Secretary when required to be paid by the applicant for service, may be credited to the appropriation, or any other funds authorized in this Act from which they were paid.

This section is intended merely to provide for the furnishing of services upon request of the owner or other person financially interested in tobacco to be sampled, inspected, or weighed and shall not be construed otherwise.

SEC. 7. That the Secretary shall provide for such reinspection or appeal inspection of tobacco as he may deem necessary for the confirmation or reversal of certificates issued under this Act. Each inspection certificate issued under this Act, unless invalidated or superseded in accordance with the regulations of the Secretary, shall be received in all courts and by all officers and employees of the United States as prima facie evidence of the truth of the statements therein contained.

SEC. 8. That warehousemen shall provide space on warehouse tickets or other tags or labels used by them for showing the grade of the lot covered thereby as determined by an authorized tobacco inspector under this Act. The Secretary may prescribe, by regula-

tion, the form in which such certification of grade shall be shown, and may require that a copy of such warehouse ticket, tag, or label shall be furnished to the Secretary.

SEC. 9. That the Secretary is authorized to collect, publish, and distribute, by telegraph, mail, or otherwise without cost to the grower, timely information on the market supply and demand, location, disposition, quality, condition, and market prices for tobacco.

SEC. 10. It shall be unlawful—

(a) For any person to use the words "United States", "Government", or "Federal", or any abbreviation thereof, in, or in connection with, any statement relating to the grade of tobacco when such grade is not, in fact, one of the grades for tobacco according to the standards of the United States.

(b) For any person falsely to make, issue, alter, forge, or counterfeit, or aid, cause, procure, or assist in or be a party to the false making, issuing, altering, forging, or counterfeiting of any certificate, stamp, tag, seal, label, or other writing purporting to be issued or authorized under this Act.

(c) For any person, not an authorized inspector under this Act, to issue a certificate or report stating the type, grade, size, or condition of any lot of tobacco to be in accordance with the standards of the United States therefor which is of such color, size, arrangement, or wording as to be mistaken for a certificate issued under this Act unless such certificate states in prominent letters in its heading that it is not issued under authority of the United States.

(d) For any person employed, designated, or licensed by the Secretary as an inspector, sampler, or weigher of tobacco under this Act knowingly to inspect, sample, or weigh improperly, or to issue any false certificate under this Act, or to accept money or other consideration, directly or indirectly, for any neglect or improper performance of duty as an inspector, sampler or weigher.

(e) For any person improperly to influence or to attempt improperly to influence or forcibly to assault, resist, impede, or interfere with any inspector, sampler, weigher, or other person employed, designated, or licensed by the Secretary in the execution of his duties under this Act: *Provided, however,* That nothing herein shall operate to prevent the owner of tobacco from appealing or protesting, in accordance with regulations of the Secretary, the grade certified for his tobacco.

(f) For any person falsely to represent or otherwise indicate that he is authorized by the Secretary to inspect, sample, or weigh tobacco under this Act.

(g) For any person to substitute, or attempt to substitute, following inspection or sampling or weighing under this Act, other tobacco for tobacco actually inspected or sampled or weighed, or in the case of tobacco inspected in auction warehouses for any person not so authorized by the Secretary to remove any certificate of grade from any lot of tobacco prior to the sale of such lot.

(h) For any person falsely to represent that tobacco has been inspected, sampled, or weighed under this Act; or knowingly to have made any false representation concerning tobacco inspected under this Act; or knowing that tobacco is to be offered for inspection or sampling under this Act to load, pack, or arrange such tobacco in

such manner as knowingly to conceal foreign matter or tobacco of inferior grade, quality, or condition; or for any person knowing that tobacco has been so loaded, packed, or arranged, to offer it for inspection or sampling without disclosing such knowledge to the inspector or sampler before inspection or sampling.

(i) For any person willfully to alter an official sample of tobacco by removing or plucking leaves or otherwise, or for any person knowing that an official sample of tobacco has been so altered, thereafter to represent such sample as an official sample.

SEC. 11. The Secretary is authorized to publish the facts regarding any violation of this Act.

SEC. 12. That any person violating any provision of sections 5 and 10 of this Act shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$1,000, or imprisoned not more than one year, or both.

SEC. 13. In construing and enforcing the provisions of this Act; the act; omission, or failure of any agent, officer, or other person acting for or employed by an association, partnership, corporation, or firm, within the scope of his employment or office, shall be deemed to be the act, omission, or failure of the association, partnership, corporation, or firm, as well as that of the person.

SEC. 14. That the Secretary is authorized to make such rules and regulations and hold such hearings as he may deem necessary to effectuate the purposes of this Act and may cooperate with any other Department or agency of the Government; any State, territory, district, or possession, or department, agency, or political subdivision thereof; purchasing and consuming organizations, boards of trade, chambers of commerce, or other associations of business men or trade organizations; or any person, whether operating in one or more jurisdictions in carrying on the work herein authorized; and he shall have the power to appoint, suspend, remove, and fix the compensation of all officers, employees, and licensees not in conflict with existing law, except that inspectors and supervisors employed hereunder on a seasonal basis and working for periods of six months or less during any twelve-month period may be appointed without reference to the provisions of the Classification Act of 1923, as amended. The Secretary is authorized to make such expenditures for rent outside of the District of Columbia, printing, binding, telegrams, telephones, books of reference, publications, furniture, stationery, office and laboratory equipment, travel, tobacco for use in preparing and demonstrating standards, and other supplies and expenses, including reporting services, as shall be necessary to the administration of this Act in the District of Columbia and elsewhere, and as may be appropriated for by Congress; and there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary for administering this Act.

SEC. 15. That in carrying on the work herein authorized, the Secretary, or any officer or employee designated by him for such purpose, shall have power to hold hearings, administer oaths, sign and issue subpoenas, examine witnesses, and require the production of books, records, accounts, memoranda, and papers. Upon refusal by any person to appear, testify, or produce books, records, accounts,

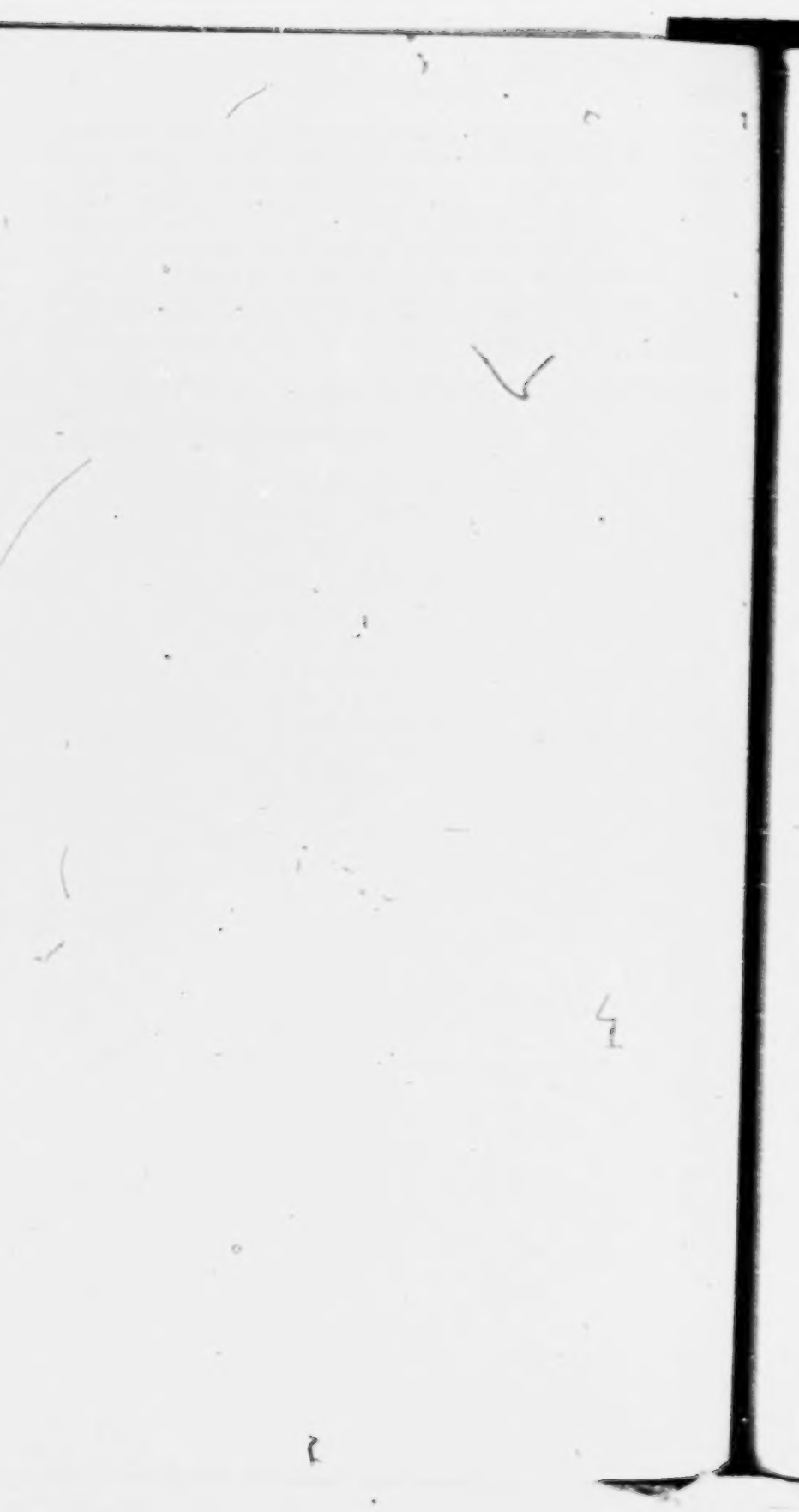
memoranda, and papers in response to a subpoena, the proper United States district court shall have power to compel obedience thereto.

SEC. 16. That if any provision of this Act or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby.

SEC. 17. That any duties devolving upon the Secretary of Agriculture by virtue of the provisions of this Act may with like force and effect be executed by such officer or officers, agent or agents, of the Department of Agriculture as the Secretary may designate for the purpose.

SEC. 18. That this Act may be cited as "The Tobacco Inspection Act."

Approved, August 23, 1935.



(19) **ORDER TO SHOW CAUSE.**

Filed Oct. 24, 1936.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF NORTH CAROLINA,
IN EQUITY.

D. T. Currin, S. M. Cutts and H. A. Averett,
doing business as Fleming Warehouse,
Oxford, N. C., H. L. Thomasson, T. B.
Williams and J. C. Adcock, doing busi-
ness as Mangum Warehouse, Oxford, N.
C., C. R. Watkins and J. R. Watkins,
doing business as the Johnson Ware-
house, Oxford, N. C., and D. F. Currin,
doing business as Farmers Warehouse,
Oxford, N. C.,
Complainants,

vs.

(Temporary
Restraining
Order)

Henry A. Wallace, Secretary of Agricul-
ture for the United States, and J. O.
Carr, United States District Attorney
for the Eastern District of North Caro-
lina, and W. R. Wilson, agent and repre-
sentative of the Secretary of Agriculture of
the United States and in charge of the
grading of tobacco upon the Oxford To-
bacco Market,
Defendants.

The complainants in the above entitled action having
instituted this action in the District Court of the United
States for the Eastern District of North Carolina for the
purpose of declaring unconstitutional and invalid the
Act of Congress known as the Tobacco Inspection Act,
Public No. 314—74th. Congress—H. R. 8026, and having
filed a verified Bill of Complaint, from an examination of
which it appears that under and by virtue of said To-
bacco Inspection Act the Secretary of Agriculture of
the United States has designated the tobacco market in
Oxford as a market on which all tobacco offered for sale
at auction for the patrons of said market must before be-
ing sold be inspected and graded by agents, representa-

tives and employees of the Department of Agriculture of the United States; that the Secretary of Agriculture, and, or the Department of Agriculture of the United States, has placed on said Oxford Tobacco Market a force of graders, who, since the opening of the tobacco market for the sale of the 1936 crop, have been inspecting and grading all of the tobacco sold on said market, and have threatened the warehousemen conducting warehouses in said Town of Oxford with prosecution if they permitted the sale of tobacco, which has not already been graded; that complainants are tobacco warehousemen in the Town of Oxford on whose floors for their patrons tobacco is sold at auction; that there are not less than fifty markets for the sale of tobacco in North Carolina, and on only three of said markets, to-wit, Farmville, Goldsboro and Oxford, is the grading of tobacco prior to its sale compulsory; that at all times prior to the sale of tobacco on said markets, and particularly upon the floors of complainants, such tobacco sold upon the floors has not at any time prior to the inspection and grading of the same entered into the current of interstate commerce, but the production, harvesting and marketing of said tobacco prior to its purchase by the buyers of such tobacco is wholly intrastate in its nature; that the establishment of compulsory grading on the Oxford Tobacco Market and (20) particularly upon the floors of complainants was and is by virtue of an order of the Secretary of Agriculture of the United States made in consequence of a purported referendum among the patrons of said market, conducted arbitrarily by the Secretary of Agriculture and without affording the patrons of said market an opportunity to intelligently express themselves and without affording to numerous patrons of said market any opportunity whatsoever to vote; that in consequence of such referendum and in consequence of the order, rules and regulations promulgated by the Secretary of Agriculture of the United States, complainants are compelled in fear of prosecution under the provisions of said Tobacco Inspection Act to use their property and conduct their business in a manner different from the manner in which they desire to conduct their business, and complainants are prevented from using and enjoying their own property and conducting their own business according to their individual wishes; that the warehousemen on all other markets in North Carolina, except the markets of Farm-

ville, Goldsboro and Oxford, are not forced to submit to the provisions of said Tobacco Inspection Act and rules and regulations promulgated by the Secretary of Agriculture of the United States; that said Act and the rules and regulations of the Secretary of Agriculture of the United States supervene and supercede the individual rights of complainants, guaranteed and safe-guarded to them by the Constitution of the United States; that complainants are without adequate remedy at law and will suffer and sustain irremediable losses and damages unless this Court in the exercise of its equitable powers grants relief that complainants are entitled to a temporary restraining order, restraining the defendants from the further enforcement upon the warehouse floors of complainants of the terms and provisions of said Tobacco Inspection Act, and the rules and regulations of the Secretary of Agriculture promulgated thereunder:

And it is therefore considered, adjudged and decreed that the defendants be and they are hereby required to show cause before the undersigned, Judge of the District Court of the United States for the Eastern District of North Carolina, at Raleigh in the State of North Carolina, on the 29th day of October 1936, at 12 o'clock, M., why restraining order should not issue until the final determination of this action.

And it is further adjudged and decreed that the complainants filed with the Clerk of this Court a good and sufficient bond acceptable to said Clerk in the sum of \$200.00, conditioned to pay such costs and damages as may be suffered and sustained by any person hereafter found to have been wrongfully enjoined and restrained hereunder.

This October 24, 1936.

I. M. MEEKINS,

Judge of the District Court of
the United States for the East-
tern District of North Carolina.

(21) **PROSECUTION BOND**

Filed Oct. 24, 1937.

(Style of Court and Title Omitted.)

Know all men by these presents that we, D. T. Currin, S. M. Cutts and H. A. Averett, doing business as Fleming Warehouse, Oxford, N. C., H. L. Thomasson, T. B. Williams and J. C. Adcock, doing business as Mangum Warehouse, Oxford, N. C., C. R. Watkins and J. R. Watkins, doing business as the Johnson Warehouse, Oxford, N. C., and D. F. Currin, doing business as Farmers Warehouse, Oxford, N. C., as principals, and E. E. Bullock, as surety, are held and firmly bound unto the defendants in the above entitled action in the sum of Two Hundred Dollars for the payment of which we bind ourselves firmly by these presents. Sealed with our seals and dated this October 24, 1936.

The condition of the above obligation is such that whereas the plaintiffs in the above named cause have brought an action against said defendants therein.

Now, if said plaintiffs shall prosecute said action with effect, or in case they fail therein shall well and truly pay all costs as shall be awarded and recovered against said plaintiffs in said action then this above obligation is to be void; otherwise it is to remain in full force and effect.

D. T. Currin, S. M. Cutts and H. A. Averett, doing business as Fleming Warehouse, Oxford, N. C. (Seal)
By S. M. CUTTS (Seal)

H. L. Thomasson, T. B. Williams and J. C. Adcock, doing business as Mangum Warehouse, Oxford, N. C. (Seal)
By J. C. ADCOCK (Seal)

C. R. Watkins and J. R. Watkins, doing business as Johnson Warehouse, Oxford, N. C. (Seal)
By C. R. WATKINS (Seal)

D. F. Currin, doing business as
Farmers Warehouse, Oxford, N.
C. (Seal)
By D. F. CURRIN (Seal)

E. E. BULLOCK (Seal)
Surety.

Taken and acknowledged before me this the 24th day
(22) of October 1936.

CHARLOTTE EASTON,
Asst. Clerk of the Superior Court

NORTH CAROLINA,
Granville County:

E. E. Bullock, being first duly sworn, says that he is
the surety whose name is signed to the within under-
taking; that he is a resident of and has property within
the State of North Carolina to the amount of Two Hun-
dred Dollars, not exempt from execution and in excess
of his debts and liabilities.

E. E. BULLOCK.

Subscribed and sworn to before me this the 24th day
of October 1936.

CHARLOTTE EASTON,
Asst. Clerk of the Superior Court.

I, Charlotte Easton, Asst. Clerk of the Superior Court
of Granville County, do hereby certify that in my opinion
the foregoing and hereto annexed prosecution bond is a
good, solvent and collectible bond.

Witness my hand and the seal of said Court, this the
24th day of October 1936.

CHARLOTTE EASTON,
Asst. Clerk of the Superior Court.

(Seal)

(23)

BOND.

Filed Oct. 26, 1936.

(Style of Court and Title Omitted.)

Know all men by these presents that we, D. T. Currin, S. M. Cutts, and H. A. Averett, doing business as Fleming Warehouse, Oxford, N. C., H. L. Thomasson, T. B. Williams and J. C. Adcock, doing business as Mangum Warehouse, Oxford, N. C., C. R. Watkins and J. R. Watkins, doing business as the Johnson Warehouse, Oxford, N. C., and D. F. Currin, doing business as Farmers Warehouse, Oxford, N. C., as principals and G. B. Watkins, as surety, are held and firmly bound unto the defendants in the above entitled action in the sum of Two Hundred Dollars, for the payment of which we bind ourselves firmly by these presents.

Sealed with our seals and dated this, October 26, 1936.

The condition of the above obligation is such that whereas, on October 24, 1936, the Honorable I. M. Meekins, Judge of the District Court of the United States for the Eastern District of North Carolina, signed a show cause order in the above entitled action requiring the defendants named in said action to appear before the said I. M. Meekins, Judge of the District Court of the United States for the Eastern District of North Carolina, at Raleigh, North Carolina, on the 29th day of October 1936 at twelve o'clock, noon, to show cause, if any they have, why a restraining order should not be made, restraining the defendants and each of them from the enforcement upon the warehouse floors of the complainants in the Town of Oxford, North Carolina, of the provisions of the Tobacco Inspection Act, Public 314-74th Congress, H. R. 8026, and the rules and regulations promulgated thereunder by the Secretary of Agriculture of the United States; and whereas, the said Honorable I. M. Meekins, Judge of the United States District Court for the Eastern District of North Carolina, in said show cause order above referred to adjudged and decreed that the complainants file with the Clerk of the United States District Court for the Eastern District of North Caro-

lina, a good and sufficient bond acceptable to said Clerk in the sum of Two Hundred Dollars, conditioned for the payment of such costs and damages as may be suffered and sustained by the defendants named in said show cause order by reason of the said show cause order;

NOW, THEREFORE, the condition of the above obligation is such that if the complainants above named shall well and truly pay all costs and damages, which shall be suffered by the defendants above named by reason of the said show cause order, then this obligation to be void and of no effect; otherwise to remain in full force and effect.

D. T. Currin, S. M. Cutts and H. A. Averett, doing business as Fleming Warehouse, Oxford, N. C.

By S. M. CUTTS. (Seal)

H. L. Thomasson, T. B. Williams and J. C. Adcock, doing business as Mangum Warehouse, Oxford, N. C.

By J. C. ADCOCK. (Seal)

C. R. Watkins and J. R. Watkins, doing business as Johnson Warehouse, Oxford, N. C.

By C. R. WATKINS. (Seal)

D. F. Currin, doing business as Farmers Warehouse, Oxford, N. C.

By D. F. CURRIN. (Seal)

G. B. WATKINS, (Seal)
Surety.

Taken and acknowledged before me this the 26th day of October 1936.

CHARLOTTE EASTON.
Asst. Clerk of the Superior Court.

28 HENRY A. WALLACE, SECRETARY, ET AL., APPELLANTS,

NORTH CAROLINA,

Granville County:

G. B. Watkins being first duly sworn, says that he is the surety whose name is signed to the within undertaking; that he is a resident of and has property within the State of North Carolina to the amount of Two Hundred Dollars, not exempt from execution and in excess of his debts and liabilities.

G. B. WATKINS.

Subscribed and sworn to before me this the 26th day of October 1936.

CHARLOTTE EASTON,

Asst. Clerk of the Superior Court.

Approved: S. A. ASHE, Clerk

By W. M. BATEMAN, Deputy

(Seal U. S. Dist. Court)

I, Charlotte Easton, Asst. Clerk of the Superior Court (25) of Granville County, do hereby certify that in my opinion the foregoing and hereto annexed bond is a good and solvent and collectible bond.

Witness my hand and seal of said Court, this the 26th day of October, 1936.

CHARLOTTE EASTON,

Asst. Clerk of the Superior Court.

(Seal Superior Court)

**SPECIAL APPEARANCE BY HENRY A. WALLACE
SECRETARY OF AGRICULTURE.**

(26)

Filed Nov. 5, 1936

(Style of Court and Title Omitted.)

Now comes,

The Secretary of Agriculture, through J. O. Carr,
United States Attorney for the Eastern District of North

Carolina, and appears specially and moves that he be stricken as a party defendant upon the ground that he is not an inhabitant of the Eastern District of North Carolina within the meaning of Section 51 of the Judicial Code as amended (U. S. C., Tit. 28, Sec. 112), and that he has not been served with any process in the above entitled cause within the territorial limits of the Eastern District of North Carolina; that said Secretary of Agriculture is an inhabitant of the District of Columbia, and that this Court has no jurisdiction over the person of said Secretary of Agriculture.

Respectfully submitted,

J. O. CARR,
United States Attorney.

RESPONSE TO ORDER TO SHOW CAUSE.

(27) Filed Nov. 5, 1936

(Style of Court and Title Omitted.)

To the Honorable Isaac M. Meekins, Judge of the above entitled Court:

Complying with the order of this Honorable Court dated October 24, 1936, requiring the defendants to show cause on or before the 29th day of October, 1936, which time to show cause was thereafter extended to the 5th day of November, 1936, why the application for an injunction *pendente lite* herein should not be granted, come now the defendants James O. Carr, United States Attorney for the Eastern District of North Carolina, and W. R. Wilson, agent, etc., and make this return to said order to show cause passed upon such application.

Said defendants respectfully represent that the complainants are not entitled to any preliminary injunction as prayed for in the bill of complaint, for the following reasons:

(1) The bill of complaint does not allege facts sufficient to show that the complainants are now suffering,

or will suffer, irreparable or other injury or damage by reason of the provisions of the Tobacco Inspection Act or of any action taken pursuant thereto.

(a) The bill of complaint does not allege that the volume of business transacted through complainant's warehouses has been, or will be, diminished because of the enforcement of the provisions of said Act for inspection and grading of tobacco, and in order to avoid such provisions some persons who formerly utilized the services offered by complainants now sell their tobacco elsewhere.

(b) The bill of complaint does not allege facts sufficient to show that the alleged disturbance of tobacco by Government graders has in fact caused, or that it will cause, complainants to receive reduced commissions on sales.

(c) The bill of complaint does not allege that criminal prosecution is eminent nor that complainants are in danger of irreparable injury or damage resulting therefrom.

WHEREFORE, the said defendants pray that the application for preliminary injunction be denied and the rule to show cause be vacated and discharged.

J. O. CARR,
United States Attorney.

MORRIS R. CLARK,
Special Assistant to the At-
torney General.
Solicitors for Defendants.

November 5, 1936.

ORDER.

(29)

Filed Dec. 11, 1936

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF NORTH CAROLINA,
RALEIGH DIVISION.

D. T. Currin, S. M. Cutts and H. A. Averett, Doing Business as Fleming Warehouse, Oxford, North Carolina, H. L. Thomasson, T. B. Williams and J. C. Adcock, Doing Business as Mangum Warehouse, Oxford, North Carolina, C. R. Watkins and J. R. Watkins, Doing Business as The Johnson Warehouse, Oxford, North Carolina, and D. F. Currin, Doing Business as Farmers Warehouse, Oxford, North Carolina, Complainants,

VS.

Henry A. Wallace, Secretary of Agriculture for the United States, and J. O. Carr, United States District Attorney for the Eastern District of North Carolina, and W. R. Wilson, Agent and Representative of the Secretary of Agriculture for the United States and in charge of the Grading of Tobacco upon the Oxford Tobacco Market, Respondents.

This cause was heard in the Raleigh Division of this District upon an order issued to and served upon the Respondents to show cause why the injunctive relief applied for in the Bill should not be granted. The Respondent, Henry A. Wallace, Secretary of Agriculture for the United States, entered a special appearance and moved to dismiss the other Respondents were present in person and by counsel.

The cause was instituted for the purpose of securing an order restraining the enforcement of the Tobacco inspection Act—Public No. 134-74th Congress—H. R. 8026, and the rules and regulations promulgated thereunder, with regard to Federal inspection of tobacco in the warehouse of the Complainants situated in Oxford, North Carolina, pending final determination upon the merits.

FINDINGS OF FACT

The Bill shows:

1. That the Complainants are engaged in selling tobacco at auction for the profit and benefit of themselves; each being intrastate in character and engaged exclusively in an intrastate enterprise—the auction sale of Tobacco upon his warehouse floors.

2. That pursuant to and in consequence of the Tobacco Inspection Act, and the rules and regulations promulgated thereunder by the Secretary of Agriculture, all tobacco sold by the Complainants at auction for their patrons during the tobacco season of 1936-1937 was required to be inspected by employees and representatives of the Respondent, the Secretary of Agriculture, before it was sold.

3. That Oxford is one of the three tobacco markets within the State of North Carolina where Federal inspection of tobacco prior to its sale on the floor of a tobacco warehouse is required; the other two markets are Goldsboro and Farmville.

4. That there are more than fifty (50) tobacco warehouses in North Carolina where millions of pounds of tobacco have been sold and will be sold during the remaining portion of the 1936-1937 tobacco season and that at none of these many markets is Federal inspection of tobacco required.

5. That numerous individuals, firms and corporations within the State of North Carolina, where tobacco markets are maintained, other than at Oxford, Goldsboro

and Farmville, are engaged in precisely the same character of business as the Complainants, who sell tobacco at auction on their respective warehouse floors for the profit and benefit to themselves where Federal inspection is not required.

6. That many of the patrons of the Complainants favor inspection and many of them are opposed to it, and that in consequence of the opposition of growers, who are patrons of the Complainants, to Federal Inspection, the Complainants have lost substantial business and therefore substantial sums of money; have suffered and sustained, and will continue to suffer and sustain irreparable loss and damage unless restrained as prayed in the Bill and have no adequate remedy at law.

At the hearing it developed from the proof through affidavits which are a part of the Record and statements of counsel which were either admitted or not denied:

A. That a large quantity of the tobacco thus far sold by the Complainants during the tobacco season of 1936-1937 was brought by growers from the State of Virginia to the warehouses of the Complainants and there sold at auction after required Federal inspection.

B. That a large quantity of the tobacco brought to the warehouses of the Complainants and sold at auction after required Federal inspection was delivered by growers who are residents and citizens of the State of (31) North Carolina and whose tobacco was seeded, set out, grown, harvested, cured and placed upon the floors of the warehouses of the Complainants direct from barn to warehouse, the entire transaction being solely within the State of North Carolina.

C. That the grower retains his title and his control of his tobacco until he accepts payment from the purchaser. If the grower's tobacco fails to sell for a satisfactory price he may withdraw it from the warehouse floor and take it home, without any expense of sale, and wait for a more favorable market.

The facts in this cause are respectively set forth in the above sections 1 to 6, both inclusive, as shown by

the averments in the Bill, and in sections A. to C., both inclusive, as shown by the proof adduced at the hearing apart from or in addition to the averments in the Bill, and I so find.

CONCLUSIONS OF LAW

1. That the tobacco placed upon the floors of the Complainants and sold after the required inspection, which was brought to the Complainants by growers and owners from the State of Virginia, is interstate in character.

2. That the tobacco placed upon the floors of the complainants and sold after the required inspection, which was seeded, set out, grown, harvested, cured and taken to market wholly within the State of North Carolina, is intrastate in character.

3. That the Tobacco Inspection Act is unconstitutional in its substance and materially discriminating in its application. Materially discriminating for that the required Federal inspection of tobacco on the floors of the Complainants is not required at any of the other tobacco markets in North Carolina (except at Goldsboro and Farmville) and this material discrimination against the Complainants is without any valid factual reason and is without affirmative significance in law or equity and cannot be enforced in the circumstances present in this cause.

(32)

OPINION

1. Obviously, the tobacco placed upon the floors of the Complainants which was brought from Virginia is interstate in character and therefore subject to required Federal inspection by virtue of the Commerce Clause of the Constitution. Sufficient authority for this position is the Gibbons case and subsequent cases on the same point in an unbroken line to date. If no other factor were involved in the equation, clearly the relief prayed should be denied and the Bill dismissed. But if there be material discrimination against the Complainants, they are entitled to the relief which they seek, at least in part, notwithstanding the interstate char-

acter of the Virginia tobacco. Discussion of discrimination is pretermitted for the moment.

2. The North Carolina tobacco placed upon the floors of the Complainants is *intrastate* in character and therefore not subject to required Federal inspection. It was seeded, set out, cultivated, harvested, cured and taken to the Complainants' floors over a North Carolina highway wholly within the State. Moreover, a large proportion of that particular tobacco will never enter the channels of interstate trade, for that it is taken to Durham, Winston-Salem and other local North Carolina markets where it is manipulated from its natural state into manufactured articles such as chewing and smoking tobacco, cigarettes and cigars, which are sold by the manufacturer to local North Carolina shoppers and in turn sold by them direct to local consumers.

3. The position of learned counsel for the Respondents that tobacco is inherently an *interstate* commodity, though boldly advanced and plausibly maintained, is without merit. There is wealth of authority that *cotton* is not inherently an *interstate* commodity. The grower's cotton in his bin or in his gin or in his storage house or in a local bonded warehouse is *intrastate* in character and takes on an *interstate* character only when it begins to move in *interstate* commerce. Once it assumes *interstate* character, cotton may move as slowly as the proverbial snail; it may come to rest in many places within and without the State of initial motion and not lose its assumed character. Once placed in the channels of *interstate* commerce, cotton, or any other commodity or thing in transit, moves on as such to its ultimate destination. If cotton is not inherently an *interstate* commodity, how can tobacco be? Upon what theory can tobacco be distinguished from cotton with this regard? The plain answer is: it can not.

The title and control of the grower's tobacco does not (23) pass from him even after sale at auction unless and until he accepts the purchase price. Until then the grower may withdraw his tobacco from the warehouse floor, take it home and hope for a more favorable market. Tobacco becomes *interstate* in character contemporaneously with the consummation of its delivery to the pur-

chaser who buys it to send forth in the channels of interstate trade. A local grower on his way to a local market with a truck load of local tobacco which he intends to offer for sale on a local warehouse floor is held up by a highwayman and forcibly relieved of his load. Upon apprehension, will the highwayman be subject to prosecution in the State or Federal Jurisdiction? Obviously, the prosecution would fall within the Jurisdiction of the State wherein the crime was committed. A person steals an automobile from the garage of the owner and drives it away without crossing a state line. Would that be a violation of the Dyer Act? The plain answer is: No.

The right of control of commodities such as tobacco, cotton and other commerce until placed in the channels of interstate trade is one of the many rights not delegated to the Federal government, but expressly reserved to the States by the Tenth Amendment.

3. For the sake of the argument, concede that *all* of the tobacco, Virginia and North Carolina, sold by the Complainants is inherently an interstate commodity, then the Complainants are entitled, at least in part, to the relief which they pray because of the material discrimination disclosed in this cause. Manifestly, the discrimination is not passive, but active, and is without pretense or subtlety.

No matter how well-founded its power, the Government must use it in full accord with the principle of equal rights to all and special privileges to none, not giving to one citizen a fish and to another a stone. It must treat each of its citizens equally and alike engaged in a common enterprise. Material discrimination between citizens of the same class, that is to say, citizens engaged in like business, cannot be enforced, and its attempted indulgence, however paternal the thought or beneficent the purpose, when challenged must yield. There is no provision, so far, for righthand selection from those of the same class, as there was none in the New Spiritual Kingdom set up in the beginning of the first century. Indeed, the Old Dispensation commands: "though shalt not respect the person of the poor nor honor the person of the mighty". Equal right has come down the centuries.

Battles enough have been fought for it, but not one in vain.

To say to the warehousemen in Oxford, Goldsboro and (34) Farmville: thou shalt not, and to all the others in the same belt, if, indeed, not in the same zone, and engaged in the same enterprize: thou mayest, is to make heavy the passive non-resistance of the citizen who looks to the Constitution as his refuge and his sanctuary.

The argument that Federal inspection of tobacco on the Complainants' floors is not compulsory but voluntary, though plausible, is specious. True, the grower in many instances has requested and the Respondents have furnished inspection. As between the grower and the Respondents the same or similar controversy present here could not arise. The controversy is not between the grower and the Respondents, but between the Complainants and the Respondents. The Complainants have not requested inspection and the Respondents have furnished none to them. The Respondents maintain inspection upon the floors of the Complainants against their will and over their protests. To concede the argument that inspection of the grower's tobacco is voluntary does not save the point. Why? Because the Complainants *must* place the grower's tobacco upon their floors subject to inspection or *refuse* to accept it for sale. If they accept the tobacco subject to inspection, the grower who is opposed to it goes elsewhere—to one of the many non-inspection near-by markets. If the Complainants refuse to accept the grower's tobacco who favors inspection, he likewise may go elsewhere, if for no other purpose than to emphasize his support of inspection and at the same time gratify his very natural human impulse to get even with the warehouseman—punish his friendly enemy, to indulge a paradox. It is in this precise dilemma that the Complainants find themselves and herein lies the great pitch and moment of the discrimination complained of. There they are, much like Mahomet's coffin. Either course they elect to follow leads to a cul-de-sac. If the Complainants refuse inspection, they offend; if they indulge it, they offend. Here's the threat, the club and the rub. The problem of the complainants is not unlike, if indeed it is not precisely the same as, that presented

in the Agriculture Adjustment Act. The cotton grower who did not sign-up was subject to a penalty, called a tax, of some \$25.00 a bale on his cotton. In spite of this provision of the act, it was contended that the sign-up was voluntary on the part of those who went in. The Courts were of the opinion, and so decided, that to call a penalty a tax does not make it a tax; that a penalty is a threat and that to act pursuant to or under a threat is inconsistent with voluntary action.

Powerful as the Government is, it cannot exercise even (35) its power to tax except upon the principle of equality to all—uniform—so that it will fall upon each payer equally and alike or its levy is void. How less can the Government say to the Complainants, you must allow inspection of tobacco on your floors before sale, and, at the same time, say to the some forty-seven or more other local warehousemen, you may sell on your floors without inspection? If this is not illegal discrimination, then what is, or what could be? To clamp the lid down on the Complainants and at the same time permit their some forty-seven or more competitors to maintain an open sesame to all growers is contrary to both the letter and the spirit of equal rights uniformly applied.

The Tobacco Inspection Act is not an act to aid the collection of revenue as is the Harrison Narcotic Act held constitutional in the Doremus case by a five to four decision. The Tobacco Inspection Act must be sustained, if sustained at all, by the Commerce Clause as is the Pure Food Act which was held constitutional in *Weeks vs. United States*. The constitutionality of the Tobacco Inspection Act is not only challenged by the Complainants in this proceeding but they challenge the unconstitutional application of the act by the Respondents in not maintaining required inspection of tobacco on the floors of the other warehousemen in the same vicinity, community and territory. Even a constitutional act cannot be enforced in an unconstitutional way. A person can be deprived of private property but not without due process of law; private property may be taken for public use but not without just compensation. If the power to deprive and to take is arbitrarily exercised without due process or without just compensation, the

net result is a great parade to no purpose. If "the power to tax involves the power to destroy", then how much more, rather than how much less, the power to discriminate involves the power to confiscate? Discrimination is confiscation. They are twin sisters of evil and can have no rightful place in the scheme of a free society bottomed on equal right uniformly applied, as in the American Commonwealth.

However constitutional any act of the Congress may be, it must be administered in accord with constitutionally guaranteed rights. To administer it otherwise is repugnant to the constitutional way.

The business of tobacco warehousemen is highly competitive. They not only sharply compete with each other on the same market but with warehousemen on other markets near-by and far away.

The warehouse business is purely a private business, (36) owned exclusively by shareholders in a corporation or as partners in a partnership or as an individual, as the case may be. This business is in no way interdependent or interlocked with the interests of the growers of tobacco but entirely independent of them as such, the business of the grower being one enterprise and that of the warehouseman being quite another. The warehouseman conducts his own business upon the floor of his own warehouse and he is in all respects an intrastate institution. The business as a whole runs into large financial proportions both as to equipment and volume.

Moreover, in the Burley Tobacco Belt in Kentucky, in the Bright Leaf Tobacco Belt in North Carolina and in the Dark Fired Tobacco Belt in Virginia the service of the warehouseman is indispensable to the tobacco industry in the mentioned belts. The industry in these belts can no more be constructively maintained without the service of the warehouseman than can the vine climb upward without support or a saw mill run without logs. And this service is as important to the grower as to the buyer.

With regard to this particularly necessary factor in the tobacco equation the Congress has not as yet legislated.

The warehouseman is not mentioned in all the act, except it is provided in Section 511 g. that he shall furnish sufficient space on the tags to accommodate the registration of the grades of the tobacco sold, et cetera. Why the warehouseman was not otherwise considered by the Congress does not appear. It may have been an oversight; it may not have been thought necessary or even expedient to do more than was done with regard to the interests of the warehousemen, and it is vain to conjecture. To repeat: they are not charged with any duty beyond that stated (511 g.) and are otherwise left to follow their own inclinations as they may find their interests prompt.

Upon their own floors and in their own houses the Complainants receive tobacco of an intrastate character in larger proportions than they receive it in interstate trade. Certainly the Respondents can exercise no required inspection of the intrastate commodity. How can they exercise control over the interstate product without maintaining the same requirements as to the competitors of the Complainants engaged in similar or the same business? To do so places the Government in the position of extending favor to the grower with one hand and of striking down the warehouseman with the other. It is well to help the grower. There is and can be no complaint about that, but the grower cannot be helped if the help sacrifices the rights of others equally entitled to the protection of their property guaranteed by the Constitution.

In Conclusions of Law, Section 3 herein, it is stated (37) that the Tobacco Inspection Act is unconstitutional. A careful study of the act has led to this conclusion uninfluenced by any consideration other than a calm, unbiased determination to seek the meaning of the act under the Constitution. To find a way, or make one, may be the privilege of the Legislator but this philosophy can have no place in the orderly consideration and determination of a question by one charged with the duty of judicial interpretation. The duties of the Legislator may be flexible and may with all propriety permit him to bend commensurately with the emergency; but the Judge like Mr. Tulkinghorn, must follow the hard road of duty and exacting probity when he comes upon it,

swerving neither to the right nor to the left and announce the law as he finds it; not as he would have it. The Judge must follow the trail of cold facts and the compulsive course of the law as they lead to Justice administered undismayed by the threat of punishment and uncorrupted by the hope of reward. The framers of the Constitution had this in mind and made the Federal Judiciary independent of both in so far as humanly possible. There is no purpose here to mind the temper of the times nor to fall into step with the observation of the great Apostle who said some things are expedient that are not righteous.

The purpose of the Tobacco Inspection Act is stated therein in Section 2 (511 a. of Title 7 U. S. C. A.), as follows: "*Transactions in tobacco involving the sale thereof at auction as commonly conducted at auction markets are affected with a public interest; that such transactions are carried on by tobacco producers generally and by persons engaged in the business of buying and selling tobacco in commerce; that the classification of tobacco according to type, grade and other characteristics affects the prices received therefor by producers; that without uniform standards of classification and inspection the evaluation of tobacco is susceptible to speculation, manipulation, and control, and unreasonable fluctuations in prices and quality determinations occur which are detrimental to the producers and persons handling tobacco in commerce; that such fluctuations constitute a burden upon commerce and make the use of uniform standards of classifications and inspections imperative for the protection of producers and others engaged in commerce and the public interest therein*". By the terms of the act, "a transaction in respect to tobacco shall be considered to be in commerce if such tobacco is part of that current in commerce usual in the tobacco industry whereby tobacco or products manufactured therefrom are sent from one state with the expectation that they (38) will end their transit, after purchase, in another, including, in addition to cases within the above general description, all cases where purchase or sale is either for shipment to another state or for manufacture within the state and the shipment outside the state of the products resulting from such manufacture". Subsection (i) of 511 of Title 7 U. S. C. A.

It is apparent from the language of the act itself that the Congress has sought, through an attempted exercise of the power granted by the Commerce Clause of the Constitution, to stabilize the prices received for tobacco by producers on local auction markets by means of inspection *there* conducted. This constitutes an invasion by the Congress of the Legislative Forum reserved to the several states by the Constitution. It was the evident intention, and with such intention there is no quarrel here, of the Congress to aid the tobacco grower to the extent at least of safe-guarding his right to receive fair value for his product. The Congress must have clearly seen that in extending the desired aid it was dealing with an *intrastate* question over which it had no control, as such, and therefore sought to carry the aid to the tobacco grower through the medium or by the vehicle of the Commerce Clause of the Constitution. The vehicle employed by the Congress, however designated and by whom, was not sufficient for the intended purpose. The Butler case and the Guffy case, decided by the Supreme Court, although primarily dealing with questions of tax legislation tend to support the interpretation of the Tobacco Inspection Act as herein appears.

The case is not presently available but an illusive fragmentary wraith of memory suggests that in one of the many cases defining the limits of the regulatory power of the Congress over commerce between the states, the late Mr. Justice Holmes, in distinguishing between those things which impose a direct burden upon such commerce, and those which affect it only indirectly, said in substance, if not in his exact words, that all would agree that commerce between the states depended upon nothing so much as upon population, but that no one would contend that, for this reason, the Congress had the power to regulate marriage and divorce.

The Congress was mindful that it could not compel inspection and grading of the grower's tobacco without his consent, hence the referendum. It is provided that if in any zone two-thirds ($2/3$) of the growers thereof voted for free inspection and grading of tobacco the service will be maintained in *that zone* without cost to the grower but not maintained otherwise in any other zone. Herein lies one of the great, if not the greatest weakness (39) of the act. If the Congress could not compel in-

spection and grading without the grower's consent, how can it compel the warehouseman, who has no interest in tobacco, either as grower, owner or buyer, to not only suffer *without* remuneration inspection and grading upon his warehouse floor, but require him to quarter the inspectors of the Government in his house and to furnish the necessary conveniences incident to inspection and grading, against his will and over his protest, to his great loss and damage as is alleged, and thus take private property for public use without just compensation? Is it sufficient answer to say: because the method of auction sale of tobacco without Government inspection and grading imposes a burden upon commerce? Clearly, not. If the Congress wished to relieve commerce of the burden designated in the act—auction sale of tobacco without inspection and grading—why did it not at the same time authorize suitable Government facilities for that precise purpose instead of placing that burden upon the warehouseman and subject him to a possible prison term if he failed to accept and carry it? As well attempt, under the Constitution, to compel the warehouseman in the circumstances present here to prepare a table for Chance or to furnish a drink offering for Destiny.

The Tobacco Inspection Act is not valid!

An Order has been passed consistent with the views expressed and the conclusions reached herein.

I. M. MEEKINS,

United States District Judge.

Done at Elizabeth City, North Carolina
December 9, 1936.

RESTRAINING ORDER.

(40)

Filed Dec. 9, 1936

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF NORTH CAROLINA,
RALEIGH DIVISION.

D. T. Currin, S. M. Cutts, and H. A.
Averett, Doing Business as Flem-
ing Warehouse, Oxford, North
Carolina, H. L. Thomasson, T. B.

Williams and J. C. Adcock, Doing Business as Mangum Warehouse, Oxford, North Carolina, C. B. Watkins and J. R. Watkins, Doing Business as The Johnson Warehouse, Oxford, North Carolina, and D. F. Currin, Doing Business as Farmers Warehouse, Oxford, North Carolina, Complainants,

vs.

Henry A. Wallace, Secretary of Agriculture for the United States, and J. O. Carr, United States District Attorney for the Eastern District of North Carolina, and W. R. Wilson, Agent and Representative of the Secretary of Agriculture for the United States and in Charge of the Grading of Tobacco Upon the Oxford Tobacco Market, Respondents.

In accord with the views expressed and the conclusions reached in a Memorandum Opinion filed in this cause:

It is CONSIDERED, ADJUDGED AND DECREED that the Respondents, Henry A. Wallace, Secretary of Agriculture for the United States and W. R. Wilson, Agent and Representative of the Secretary of Agriculture for the United States, in charge of the grading of tobacco upon the Oxford Tobacco Market, be and they are hereby restrained and enjoined from the further enforcement upon the warehouse floors of the Complainants in the Town of Oxford of the Tobacco Inspection Act, and the rules and regulations promulgated thereunder by the Secretary of Agriculture, until the final determination of this cause upon its merits.

The Complainants to give good and sufficient cost bond in the sum of TWO HUNDRED AND FIFTY DOLLARS (\$250.00).

This December 8, 1936.

I. M. MEEKINS,
United States District Judge.

BOND.

(41) Filed Dec. 19, 1936.

(Style of Court and Title Omitted.)

Whereas, in the above entitled cause now pending in the District Court of the United States for the Eastern District of North Carolina, Honorable I. M. Meekins, District Judge, on December 8, 1936, signed a Restraining Order, restraining Henry A. Wallace, Secretary of Agriculture of the United States, and W. R. Wilson, agent and representative of the Secretary of Agriculture of the United States, and in charge of the grading of tobacco upon the Oxford Tobacco Market, from the further enforcement upon the warehouse floors of the Complainants in the Town of Oxford of the Tobacco Inspection Act and the rules and regulations promulgated thereunder by the Secretary of Agriculture of the United States, until the final determination of this cause upon its merits; and whereas, by the aforesaid Restraining Order said Judge required the complainants to give a good and sufficient bond in the sum of Two Hundred and Fifty (\$250.00) Dollars; and whereas, the complainants desire in all respects to comply with said order and to give said bond;

NOW, THEREFORE, know all men by these presents that we, D. T. Currin, S. M. Cutts, and H. A. Averett, doing business as Fleming Warehouse, Oxford, N. C., H. L. Thomasson, T. B. Williams and J. C. Adcock, doing business as Mangum Warehouse, Oxford, N. C., C. R. Watkins and J. R. Watkins, doing business as the Johnson Warehouse, Oxford, N. C., and D. F. Currin, doing business as Farmers Warehouse, Oxford, N. C., as principals, and E. E. FULLER, as surety, are held and firmly bound unto the defendants, Henry A. Wallace, Secretary of Agriculture of the United States, and W. R. Wilson, agent and representative of the Secretary of Agriculture of the United States and in charge of the grading of tobacco upon the Oxford Tobacco Market, in the sum of Two Hundred and Fifty (\$250.00) Dollars, for the payment whereof we bind ourselves firmly by these presents.

Sealed with our seals and dated this December 16, 1936.

The condition of the above obligation is such that the (42) principals and surety will pay, or cause to be paid, to the said Henry A. Wallace, Secretary of Agriculture as aforesaid, and the said W. R. Wilson, agent and representative of said Secretary of Agriculture of the United States, and in charge of the grading of tobacco upon the Oxford Tobacco Market, such damages not to exceed the aforesaid sum of Two Hundred and Fifty (\$250.00) Dollars as the said Wallace and Wilson may sustain and recover against the complainants on account of said restraining order; and if no damages be recovered then this recognizance to be null and void; otherwise to remain in full force and effect.

D. T. Currin, S. M. Cutts and H. A. Averett, doing business as Fleming Warehouse, Oxford, N. C.

(Seal)

By H. A. AVERETT, (Seal)

H. L. Thomasson, T. B. Williams and J. C. Adcock, doing business as Mangum Warehouse, Oxford, N. C.

(Seal)

By J. C. ADCOCK, (Seal)

C. R. Watkins and J. R. Watkins, doing business as Johnson Warehouse, Oxford, N. C.

(Seal)

By J. R. WATKINS, (Seal)

D. F. Currin, doing business as Farmers Warehouse, Oxford, N. C.

(Seal)

By D. F. CURRIN, (Seal)
Principals.

E. E. FULLER, (Seal)
Surety.

Taken and acknowledged before me this the 17th day of December 1936.

A. W. GRAHAM, JR.,
Clerk of the Superior Court.

NORTH CAROLINA,
Granville County:

E. E. Fuller, being first duly sworn, says that he is the surety whose name is signed to the within undertaking; that he is a resident of and has property within the State of North Carolina to the amount of Two Hundred and Fifty Dollars, not exempt from execution and in excess of his debts and liabilities.

E. E. FULLER.

Subscribed and sworn to before me this the 17th day of December 1936.

A. W. GRAHAM, JR.
Clerk of the Superior Court.

(Seal)

I, A. W. Graham, Jr., Clerk of the Superior Court of (43) Granville County, do hereby certify that in my opinion the foregoing and hereto annexed Bond is a good, solvent and collectible bond.

Witness my hand and the seal of said Court this the 17th day of December 1936.

A. W. GRAHAM, JR.,
Clerk of the Superior Court of
Granville County.

(Seal)

**ORDER EXTENDING DEFTS' TIME TO ANSWER
TO DECEMBER 1, 1936.**

(44) Filed Nov. 16, 1936.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF NORTH CAROLINA,
RALEIGH DIVISION.

D. T. Currin, S. M. Cutts and H. A. Averett, doing business as Fleming Warehouse, Oxford, N. C.; H. L. Thomasson, T. B. Williams and J. C. Adcock, doing business as Mangum Warehouse, Oxford, N. C.; C. R. Watkins and J. R. Watkins, doing business as the Johnson Warehouse, Oxford, N. C.; and D. F. Currin doing business as Farmers Warehouse, Oxford, N. C., Complainants,

vs.

In Equity No. 663

Henry A. Wallace, Secretary of Agriculture for the United States, and J. O. Carr, United States District Attorney for the Eastern District of North Carolina, and W. R. Wilson, agent and representative of the Secretary of Agriculture of the United States and in charge of the grading of tobacco upon the Oxford Tobacco Market, Defendants.

For good cause shown, the defendant, Henry A. Wallace, Secretary of Agriculture for the United States, for whom the court preserves all rights under his special appearance and his exception to the refusal of the court to strike him as a party defendant for the reason set out in his special appearance, is hereby granted until December 1, 1936 to file answer or other pleading to the Bill of Complaint in this cause.

Done at Elizabeth City, N. C., this 16th day of November, 1936.

I. M. MEEKINS,
District Judge.

**ORDER EXTENDING DEFTS' TIME TO ANSWER
TO DECEMBER 20, 1936.**

(45) Filed Dec. 2, 1936.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF NORTH CAROLINA,
RALEIGH DIVISION.

D. T. Currin, S. M. Cutts and T. A. Averett, Doing Business as Fleming Warehouse, Oxford, North Carolina, H. L. Thomasson, T. B. Williams and J. C. Adcock, Doing Business as Mangum Warehouse, Oxford, North Carolina, C. R. Watkins and J. R. Watkins, Doing Business as The Johnson Warehouse, Oxford, North Carolina, and D. F. Currin, Doing Business as Farmers Warehouse, Oxford, North Carolina, Complainants,

vs.

Henry A. Wallace, Secretary of Agriculture for the United States, and J. O. Carr, United States District Attorney for the Eastern District of North Carolina, and W. R. Wilson, Agent and Representative of the Secretary of Agriculture for the United States and in Charge of the Grading of Tobacco upon the Oxford Tobacco Market, Respondents.

On motion of J. O. Carr, United States Attorney for the Eastern District of North Carolina, it is ORDERED and ADJUDGED that the time for the answering of the defendants in this cause is extended under the former orders until Tuesday, the 20th day of December, 1936, inclusive.

I. M. MEEKINS,
United States District Judge.

Done at Washington, North Carolina, this the 1st day of December, 1936.

**ORDER EXTENDING DEFTS' TIME TO ANSWER
TO JANUARY 2, 1937.**

(46) Filed Dec. 21, 1936.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF NORTH CAROLINA,
RALEIGH DIVISION.

D. T. Currin, and others
Complainants,
vs. No. 663 Eq.

Henry A. Wallace, Secretary of
Agriculture, and others
Defendants.

On motion of J. O. Carr, United States Attorney for the Eastern District of North Carolina, and for good cause shown, it is

ORDERED AND ADJUDGED that the time for filing answer in this cause is extended under the former orders of this court until Saturday, the 2nd day of January, 1937, inclusive.

Done at Elizabeth City, N. C., this 19th day of December, 1936.

I. M. MEEKINS,
U. S. District Judge.

ANSWER.

(47)

Filed Jan. 2, 1937.

In Equity.

(Style of Court and Title Omitted.)

JOINT AND SEVERAL ANSWER TO THE BILL OF COMPLAINT OF DEFENDANTS HENRY A. WALLACE, SECRETARY OF AGRICULTURE OF THE UNITED STATES, J. O. CARR, UNITED STATES DISTRICT ATTORNEY FOR THE EASTERN DISTRICT OF NORTH CAROLINA, AND W. R. WILSON, AGENT AND REPRESENTATIVE OF THE SECRETARY OF AGRICULTURE OF THE UNITED STATES AND IN CHARGE OF GRADING TOBACCO UPON THE OXFORD TOBACCO MARKET.

TO THE HONORABLE JUDGE OF THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NORTH CAROLINA:

Come now the defendants Henry A. Wallace, Secretary of Agriculture of the United States, J. O. Carr, United States District Attorney for the Eastern District of North Carolina, and W. R. Wilson, agent and representative of the Secretary of Agriculture of the United States and in charge of grading tobacco upon the Oxford Tobacco Market, and appearing by J. O. Carr, United States Attorney for the Eastern District of North Carolina, John H. Manning, Assistant United States Attorney for said District, Morris R. Clark, Special Assistant to the Attorney General, and Fred Lees, Attorney, United States Department of Agriculture, and reserving all manner of exceptions that may be had to the uncertainties and imperfections of complainants' bill of complaint, exhibited against them herein, in answer to the said Bill or (48) to so much thereof as they are advised is material to be answered, allege and say:

1. Answering the first paragraph of the bill, defendants admit the allegations thereof.

2. Answering the second paragraph of the said bill, defendants admit the allegations thereof.

3. Answering the third paragraph of the said bill, defendants admit there is a controversy existing between complainants and defendants regarding the enforcement of the Tobacco Inspection Act, and further admit that the complainants have instituted this action for the purpose of having the aforesaid Tobacco Inspection Act declared unconstitutional, but defendants deny that said Tobacco Inspection Act, or any part or provision thereof, is unconstitutional or in violation of the organic law of the land for the reasons alleged in said bill of complaint or for any other reasons.

4. Answering paragraph four of said bill, defendants deny that sections 5 and 8 of the aforesaid Tobacco Inspection Act, or any other part or provision of said Act, attempt to regulate, direct and control the handling, marketing and sale of tobacco produced, harvested, handled and sold within the borders of the State of North Carolina, and in this connection defendants allege that the Tobacco Inspection Act requires Federal inspect. grading and certification of tobacco prior to its sale at auction in warehouses in designated markets where tobacco or products manufactured therefrom move in commerce and requires the warehousemen owning and operating such warehouses to provide space on warehouse tickets or other tags or labels used by them to show the grade of the lot of tobacco covered thereby as determined by an authorized inspector under the said Tobacco Inspection Act.

5. Answering paragraph five of the said bill of complaint, defendants admit the allegations thereof.

6. Answering paragraph six of the said bill or complaint, defendants admit that section 12 of said Tobacco Inspection Act provides that violations of sections 5 and 10 of said Act shall be punished as alleged in the first (49) sentence of said paragraph six of said bill.

Further answering paragraph six of said bill, defendants deny that complainants have been forced to submit

to the grading by graders employed by the Department of Agriculture of the United States of tobacco offered for sale by the patrons of complainant upon the floors of complainant's warehouses because of the aforesaid section 12 of the said Act and the probability of prosecution for violation of the terms of said Act by complainants.

And in this connection defendants allege that the Tobacco Inspection Act only requires the inspection, grading and certification of tobacco when offered for sale at auction in a warehouse in a designated market.

7. Answering paragraph seven of said bill of complaint, defendants admit the allegations thereof.

8. Answering paragraph eight of said bill of complaint, defendants deny that all services rendered and all duties performed by said complainants prior to delivery of tobacco sold by these complainants for their patrons and all sales of tobacco are intra-state transactions. Defendants further deny that such services rendered and duties performed are not affected by or with a public interest.

Further answering said paragraph eight of said bill of complaint, defendants allege that the production, harvesting and hauling of tobacco to a warehouse for sale are intra-state activities and defendants allege that the Secretary of Agriculture or his agents, representatives and employees have not, under the Tobacco Inspection Act, exercised or attempted to exercise any control over or regulation of said intra-state activities.

Further answering said paragraph eight of said bill of complaint, defendants deny that the grading and marketing of leaf tobacco sold at auction in a warehouse in a designated market is intra-state commerce. Defendants further deny that sales of tobacco at auction in complainants' warehouses are in no way connected with interstate commerce, and defendants allege that such sales at auction on the floors of complainants' warehouses are a part of the movement of tobacco in the current of interstate commerce, and in this connection defendants fur-

ther allege that large and substantial quantities of leaf tobacco sold and marketed on the floors of the complainants' warehouses in Oxford, North Carolina, are produced in the State of Virginia and move in interstate commerce from said State of Virginia into the said State of North Carolina and are there marketed and sold at auction upon the floors of complainants' warehouses and, when so sold, move from the floors of complainants' warehouses into interstate and foreign commerce.

9. Answering paragraph nine of said bill of complaint, defendants deny all of the allegations thereof, and further answering said paragraph nine of said bill of complaint, defendants allege that large and substantial quantities of leaf tobacco sold and marketed on the floors of the complainants' warehouses in Oxford, North Carolina, are produced in the State of Virginia and move in interstate commerce from said State of Virginia into the said State of North Carolina and are there marketed and sold at auction upon the floors of complainants' warehouses and, when so sold, move from the floors of complainants' warehouses into interstate and foreign commerce.

10. Answering paragraph ten of the said bill of complaint, defendants deny that the Tobacco Inspection Act is based upon Article I, Section 9, Clause 3 of the Constitution of the United States, and allege that said Act is based upon Article I, Section 8, Clauses 3 and 18, which respectively authorize Congress "to regulate commerce with foreign nations and among the several States and with the Indian tribes" and "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this Constitution in the Government of the United States or in any Department or officer thereof." In further answering paragraph 10, defendants deny that said Tobacco Inspection Act is unconstitutional and void for any cause or reason whatsoever, including the reasons (51) set forth in the later subsections of said paragraph ten of the bill of complaint.

(a) Answering subsection (a) of paragraph ten of said bill of complaint, defendants deny all of the allegations thereof except that they admit that the production

and hauling of tobacco to market are intra-state activities.

(b) Answering subsection (b) of paragraph ten of said bill of complaint, defendants deny all of the allegations thereof except that they admit that the production of tobacco is an intra-state activity.

(c) Answering subsection (c) of paragraph ten of said bill of complaint, defendants deny all the allegations thereof.

And further answering subsections (a), (b) and (c) of paragraph ten of said bill of complaint, defendants allege that large and substantial quantities of leaf tobacco sold and marketed on the floors of the complainants' warehouses, in Oxford, North Carolina, are produced in the State of Virginia and move in interstate commerce from said state of Virginia into the said State of North Carolina and are there marketed and sold at auction upon the floors of complainants' warehouses and, when so sold, move from the floors of complainants' warehouses into interstate and foreign commerce.

(d) Answering subsection (d) of paragraph ten of said bill of complaint, defendants deny that said Tobacco Inspection Act is unconstitutional for any of the reasons in said subsection (d) set forth, and more particularly, defendants deny that the establishment by the Department of Agriculture of the United States of the requirement for the inspection and grading of tobacco sold at auction on the warehouse floors in Farmville, Goldsboro, and Oxford is discriminatory, unconstitutional and invalid and in violation of the Fifth Amendment of the Constitution of the United States.

(e) Answering subsection (e) of paragraph ten of said bill of complaint, defendants admit that there are many markets in North Carolina where tobacco is sold at auction and that to date only three of those markets, to wit, Farmville, Goldsboro and Oxford, have been designated by the Secretary of Agriculture under the said Tobacco Inspection Act, and in this connection defendants allege that the said Act contemplates that other such markets where tobacco or products manufactured

therefrom ~~more~~ in commerce will from time to time be designated by the Secretary of Agriculture of the United States and tobacco sold at auction thereon will thereupon be subjected to inspection, grading and certification by Federal graders and inspectors under said Act.

Further answering subsection (e) of paragraph ten of the bill of complaint, defendants admit that the tobacco sold at said three markets so designated by the Secretary of Agriculture under the said Act is a small part of the tobacco sold at other markets in the State of North Carolina.

Further answering said subsection (e) of paragraph ten of the bill of complaint, defendants deny that the provisions of said Act and the designation by the Secretary of Agriculture of the United States of the markets at Farmville, Goldsboro and Oxford constitutes an arbitrary and discriminatory act on the part of the Congress of the United States and the Secretary of Agriculture of the United States, and defendants further deny that the said provisions of said Act and the designation by said Secretary places an unusual and not general burden upon those persons offering their tobacco for sale upon the aforesaid markets and upon the operators of warehouses in said markets and upon complainants, and defendants further deny that sellers and purchasers of tobacco on markets other than the aforesaid markets are granted by said Act or by the regulations promulgated by the Secretary of Agriculture thereunder special privileges and immunity not accorded complainants, and defendants further deny that by reason of any act or thing alleged in said subsection (e) of paragraph ten of said bill of complaint said Tobacco Inspection Act supervenes and precludes the enjoyment by complainants of equal rights to which they are entitled by the Constitution of the United States.

- (f) Answering subsection (f) of paragraph ten of the (53) said bill of complaint, defendants deny all the allegations thereof.

11. Answering paragraph 11 of the said bill of complaint, defendants deny all the allegations thereof ex-

cept the allegation that "complainants operate warehouses in the town of Oxford, North Carolina, for the sale at auction of tobacco by their patrons in competition with others engaged in a like enterprise both in the Oxford market and other markets located in North Carolina."

Defendants further deny that many of the patrons of complainants are opposed to the inspection and grading of their tobacco by Government officials and that many of the patrons of complainants are selling their tobacco elsewhere than on the floors of the complainants' warehouses for the sole reason that such patrons are opposed to Government inspection and grading. Defendants further deny that complainants are daily suffering loss of business and patronage in consequence of the enforcement of the said Tobacco Inspection Act, and in this connection defendants allege that in excess of two-thirds of the growers patronizing the Oxford market have voted in favor of such inspection and grading of their tobacco by Government officials, and defendants further allege that few, if any, of the patrons of complainants are opposed to the inspection and grading of their tobacco as provided for in said Tobacco Inspection Act, and defendants further allege that many growers of tobacco, who would otherwise not have sold their tobacco on the market at Oxford or on the floors of complainants' warehouses, have been attracted to and caused their tobacco to be transported to the market at Oxford and to the floors of complainants' warehouses and sold at auction thereon on account of the benefits secured to them by the provisions of said Act for the grading and inspection of their tobacco. Defendants further allege that all warehouses at Oxford at which tobacco is sold at auction have been subjected to the provisions of the Tobacco Inspection Act.

12. Answering paragraph 12 of the said bill of complaint, defendants deny that the handling of tobacco by Federal inspectors in the course of grading and inspecting such tobacco seriously disarranges it or in any way (54) damages such tobacco or materially affects the value of such tobacco or reduces the compensation paid complainants for the handling thereof. And in this con-

nection, defendants are informed and believe that tobacco growers have received better prices for their tobacco sold upon the floors of complainants' warehouses during the tobacco auction season of 1936, than in previous years, and that such better prices so received are a direct result of the grading and inspection of said tobacco by Federal graders and inspectors as provided for by said Act. And defendants further allege that any burden incident to the grading and inspection of such tobacco upon the floors of complainants' warehouses imposed upon complainants is the result of the lawful exercise of the legislative power on the part of the Congress of the United States.

13. Answering paragraph 13 of the said bill of complaint, defendants deny that complainants "are in no sense of the word engaged in interstate commerce and tobacco sold by complainants for the patrons of complainants does not enter into interstate commerce until after complainants have completed and discharged every act and duty in regard to such tobacco which complainants are called upon to do and perform."

Defendants admit "that such inspection and grading is all done and performed after such tobacco is placed upon the warehouse floors of complainants and prior to the sale at auction of such tobacco."

Defendants deny that "every act performed by the Government graders pursuant to said Tobacco Inspection Act and the rules and regulations promulgated by the Secretary of Agriculture of the United States is performed prior to the time that such tobacco enters the current of interstate commerce."

Defendants allege that in the customary movement of tobacco in commerce the tobacco becomes a part of the current of interstate commerce upon its delivery by the grower at the warehouse for sale at auction therein.

14. Answering paragraph 14 of said bill of complaint, defendants deny that complainants and their patrons have been threatened with indictments if they refused to permit inspection and grading of tobacco on the floors (55) of complainants' warehouses by Government grad-

ers. Defendants further deny that complainants have been prevented from using and enjoying their property free from improper and unlawful molestation and interference by any such alleged threats of indictments.

Defendants admit that unless lawfully restrained the Secretary of Agriculture of the United States is required by the provisions of said Tobacco Inspection Act to take appropriate proceedings for its enforcement and that the United States Attorney for the Eastern District of North Carolina is the person, unless lawfully restrained, whose duty it will be, or may become, to prosecute the complainants for violations of the aforesaid Tobacco Inspection Act.

15. Answering paragraph 15 of said bill of complaint, defendants deny all the allegations thereof.

16. Answering paragraph 16 of said bill of Complaint, defendants deny all the allegations thereof.

Answering complainants' second cause of action, these defendants allege and say:

1. Answering paragraph 1 of complainants' second cause of action, defendants reiterate and reaffirm, and expressly do not waive, each and every matter of defense hereinbefore set forth in their answer to complainants' first cause of action.

2. (a) Answering subsection (a) of paragraph two of complainants' second cause of action, defendants deny that said Tobacco Inspection Act provides that the Secretary of Agriculture of the United States may designate any market on which tobacco is sold at auction as a market at which all tobacco sold at auction shall be first inspected and graded by Federal inspectors, and in this connection defendants allege that under the provisions of said Tobacco Inspection Act the Secretary of Agriculture of the United States may only "designate those auction markets where tobacco bought and sold thereon at auction or the products customarily manufactured therefrom moves in commerce."

(b) * Answering subsection (b) of paragraph two of

complainants' second cause of action, defendants admit (56) all the allegations thereof.

(c) Answering subsection (c) of paragraph two of complainants' second cause of action, defendants admit all the allegations thereof.

(d) Answering subsection (d) of paragraph two of complainants' second cause of action, defendants deny all the allegations therein contained.

(e) Answering subsection (e) of paragraph two of complainants' second cause of action, defendants deny all the allegations therein contained and allege that all growers of tobacco legally entitled to participate in said referendum were actually or constructively notified and permitted to cast their ballot in said referendum.

(f) Answering subsection (f) of paragraph two of complainants' second cause of action, defendants deny all the allegations thereof.

(g) Answering subsection (g) of paragraph two of complainants' second cause of action, defendants deny all the allegations thereof.

3. Answering paragraph three of complainants' second cause of action, defendants deny that the referendum therein referred to was unlawful and unconstitutional and further deny that the designation by the Secretary of Agriculture of the town of Oxford as a market within the meaning of said Act was or is invalid or that any regulation promulgated by the Secretary of Agriculture of the United States under said Tobacco Inspection Act or as a result of said referendum was or is invalid.

Defendants admit that the Secretary of Agriculture of the United States has appointed, pursuant to the provisions of said Tobacco Inspection Act, said inspectors and graders, that said inspectors and graders have inspected and graded and will, unless lawfully restrained, continue to inspect and grade tobacco sold on the floors of complainants' warehouses. Defendants admit that said W. R. Wilson is an employee of the Department of Agriculture and will, unless lawfully restrained, continue to

enforce the terms and conditions of said Tobacco Inspection Act.

Defendants deny that said inspectors and graders, or said W. R. Wilson, will prosecute complainants if complainants undertake to sell, and do sell for their patrons, tobacco which has not first been inspected and graded, and defendants allege that said inspectors and graders and said W. R. Wilson have no power or authority to prosecute complainants for violations of said Tobacco Inspection Act and that such power and authority is vested solely in the United States Attorney for the Eastern District of North Carolina and in this Honorable Court.

Defendants further deny that complainants have suffered any irreparable loss as a result of the matters set forth in paragraph three of complainants' second cause of action, and allege that any loss or damage they have suffered or may suffer is a result of the lawful exercise of the legislative power on the part of the Congress of the United States.

4. Answering paragraph four of complainants' second cause of action, defendants deny all the allegations thereof.

5. Answering paragraph five of complainants' second cause of action, defendants admit the allegations thereof except that they deny that "not infrequently patrons of complainants have refused to permit their tobacco to be inspected and graded and have been prevented by the operation of said Tobacco Inspection Act from selling their tobacco on the floors of complainants' warehouses," and defendants further deny that complainants have suffered or will continue to suffer great and irreparable loss as the result of any of the matters and things set forth and alleged in said paragraph five, and in this connection defendants allege that in excess of two-thirds of the growers patronizing the Oxford market have voted in favor of such inspection and grading of their tobacco by Government officials, and defendants further allege, that few, if any, of the patrons of complainants are opposed to the inspection and grading of their tobacco as provided

for in said Tobacco Inspection Act, and defendants further allege that many growers of tobacco, who would otherwise not have sold their tobacco on the market at (58) Oxford or on the floors of complainants' warehouses, have been attracted to and caused their tobacco to be transported to the market at Oxford and to the floors of complainants' warehouses and sold thereon on account of the benefits secured to them by the provisions of said Act for the grading and inspection of their tobacco. Defendants further allege that all warehouses at Oxford at which tobacco is sold at auction have been subjected to the provisions of the Tobacco Inspection Act.

6. Answering paragraph six of the second cause of action, defendants deny all the allegations thereof.

7. Answering paragraph seven of the second cause of action, defendants deny all the allegations thereof.

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And as a further complete and separate defense to the matters set forth in complainants' bill of complaint, defendants allege as follows:

1. That the Tobacco Inspection Act contemplates the designation by the Secretary of Agriculture of the United States of those auction markets where tobacco bought and sold thereon or the products customarily manufactured therefrom moves in commerce; that the tobacco bought and sold on the floors of complainants' warehouses at Oxford, North Carolina, "moves in commerce" within the definition of "commerce" as set forth in the said Tobacco Inspection Act; that in addition to tobacco grown and produced in the State of North Carolina, large and substantial quantities of tobacco grown in the State of Virginia are transported in interstate commerce from said State of Virginia into the State of North Carolina and sold upon the floors of the complainants' warehouses at Oxford, North Carolina, along with tobacco produced in the State of North Carolina; that immediately after such sale, the major portion of the tobacco sold on the floors of complainants' warehouses, whether grown in North Carolina or Virginia, is removed from complainants' warehouses and immediately transported out of the

State of North Carolina in interstate commerce and
(59) foreign commerce;

That upon delivery of tobacco grown in North Carolina to complainants' warehouses with instructions to sell it at auction, such tobacco then enters the stream of interstate commerce.

2. Defendants further allege that the sale of such tobacco at auction in warehouses without inspection, grading and certification is subject to Federal regulation and that Congress has finally declared that such sales affect the price of tobacco and are subject to speculation, manipulation, control and unreasonable fluctuations, and that such fluctuations constitute a burden upon interstate commerce.

Defendants further allege that such auction sale transactions in tobacco in auction markets burden and obstruct the movement of tobacco and its manufactured products in interstate commerce and that such auction sale transactions are subject to Federal regulations under the powers conferred upon the Congress by Article I, Section 8, Clause 18 of the Constitution of the United States.

3. Defendants admit that there are many markets in North Carolina where tobacco is sold at auction and that up to date only three of those markets have been designated under the Act. The defendants allege that the Act contemplates that eventually all markets where tobacco moves in commerce will from time to time be designated by the Secretary of Agriculture of the United States as provided for by said Act and tobacco sold at auction thereon will be subjected to inspection, grading and certification under the said Tobacco Inspection Act, and in this connection defendants respectfully wish to point out to the attention of this Honorable Court that this is the first tobacco auction season in which the Tobacco Inspection Act has been in actual operation and that the defendant Secretary of Agriculture of the United States, together with the Department of Agriculture, were granted insufficient funds by Congressional appropriation to enable the designation by the Secretary of Agriculture of all auction markets in North Carolina under said Act.

That the graders and inspectors required to be appointed under said Act must be men expertly trained in the inspection and grading of tobacco; that it was impossible for the Secretary of Agriculture of the United (60) States and the Department of Agriculture to secure in the limited time before the opening of the tobacco auction season of 1936 a sufficient number of expertly trained inspectors and graders to enable all markets in North Carolina, where tobacco is sold at auction and moves in commerce, to be designated by the Secretary of Agriculture as auction markets within the meaning of the Tobacco Inspection Act;

That the markets at Farmville, Goldsboro and Oxford, all in North Carolina, were designated by the Secretary of Agriculture under the provisions of the Tobacco Inspection Act because of the fact that in previous years the Department of Agriculture has established the voluntary inspection of tobacco under the Farm Products Inspection Act at said places and the growers of tobacco in those localities were familiar with the benefits accruing from Federal inspection and grading of tobacco.

WHEREFORE, having thus made answer to all matters and things contained in complainants' bill of complaint, these defendants pray that complainant take nothing by reason thereof and that they may be hence dismissed with their costs.

Dated this 2nd day of January, 1937.

J. O. CARR,
United States Attorney.

JOHN H. MANNING,
Asst. United States Attorney.

MORRIS R. CLARK,
Special Assistant to the Attorney General.

FRED LEES,
Attorney, Department of Agriculture,

Attorneys for Defendants.

CITY OF WASHINGTON,

(61) District of Columbia: ss.

Charles E. Gage, being first duly sworn, deposes and says that he is an employ   of the United States Department of Agriculture, Bureau of Agricultural Economics, with the title "Senior Marketing Specialist in Charge of Tobacco Section," that he makes this verification for and on behalf of all the defendants in this cause, that he has read the above and foregoing answer to complainants' bill of complaint, that he is familiar with all facts therein stated, and verily believes them to be true.

CHARLES E. GAGE.

Subscribed and sworn to before me this 31st day of December, 1936.

DOROTHY JOST,
Notary Public.

Received copy of the foregoing answer this day of January, 1937.

Attorneys for Complainants.

NORTH CAROLINA,

(62) Pasquotank County:

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W. R. Wilson, having been first duly sworn says: he is one of the defendants in this action, that he has read the foregoing answer, that the same is true of his own knowledge except as to those matters and things therein stated upon information and belief, and as to them he believes it to be true.

W. R. WILSON.

Sworn to and subscribed before me this the 16th day of February, 1937.

J. A. HOOPER,
Deputy Clerk U. S. District
Court.

(Seal)

66 HENRY A. WALLACE, SECRETARY, ET AL., APPELLANTS,

**ORDER FOR SPECIAL CIVIL TERM OF COURT AT
(63) ELIZABETH CITY, N. C.**

Filed Jan. 29, 1937.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF NORTH CAROLINA

It is hereby ORDERED and DECREED that a Special Civil Term of the United States District Court for the Eastern District of North Carolina, shall be begun and held in the Elizabeth City Division, at Elizabeth City, North Carolina, on the third Monday in February, 1937, to-wit: February 15, 1937, for the trial of Civil Cases, said Term being held under the Provision of Section 11, Judicial Code.

IT IS FURTHER ORDERED by the Court that the Clerk enter this order on the Minutes at Raleigh, N. C., and also upon the Minutes at Elizabeth City N. C.

This 28th day of January, 1937.

I. M. MEEKINS,
Judge U. S. District Court.

**STATEMENT IN NARRATIVE FORM OF ALL
(64) EVIDENCE.**

Filed July 9, 1937.

(Style of Court and Title Omitted.)

In the interest of time it is agreed between Complain-
(65) ants and Defendants that:

First: The complainants in this action were, at the date of the institution of the action, engaged in conducting warehouses for the sale of tobacco at auction in the Town of Oxford, in property either owned or leased by them, and under their control.

Second: That other than the markets of Greenville, Farmville and Oxford there are 37 markets in North

D. F. CURRIN

Carolina engaged in the sale of tobacco, at auction, conducting their markets in substantially the same manner and following substantially the same practises as were followed and are followed at Oxford, one of which 37 markets is a burly market.

Third: That only on the markets of Greenville, Farmville and Oxford, was "The Tobacco Inspection Act" enforced during the season of 1936-1937.

Fourth: That there is a controversy between the Complainants and the Defendants.

Mr. D. F. Currin.

DIRECT EXAMINATION

I am one of the complainants in this action living at (66) Oxford, and am engaged in the auction warehouse business for the sale of leaf tobacco. I have been engaged in that business during the year and in the fall of 1936 at the time this suit was instituted (R. 5). The warehouse has 33,000 square feet of floor space and costs about \$40,000 (R. 6).

As a warehouseman I received as compensation an auction fee, a weighing fee, and 2-1/2% on money paid out, these fees being fixed by statute in North Carolina (R. 6).

When a patron's tobacco is offered for sale he has the right to reject the bid made according to the practice prevailing on markets without any expense of sale to him except that involved in taking his tobacco to and from the warehouse (R. 6-7).

During the fall of 1936 the government graders inspected the tobacco on the floor just in front or before each sale (R. 7-8).

I have a brother, E. M. Currin, living in Harnett County who is interested in the tobacco warehouse which I operate as owner of the building (R. 8). Prior to 1936 he sold a great deal of tobacco to me but in 1936 he sold me rather a small percent. He stated several times at about the time we were opening the tobacco market that he didn't want his tobacco government graded for the reason that they tore up the tobacco be-

ing displayed which prevented it from being displayed to its best advantage on the floor (R. 8-9).

Most of the tobacco sold on the Oxford market in the season 1936-1937 was raised in our State (R. 10).

CROSS EXAMINATION

The weighing fee I receive as compensation amounts to 10¢ per 100, the auction fee 15¢, and the other fee 2½% on the money (R. 10).

The buyer's men follow the auctioneer behind the sale. (67) and the customer may reject the sale up until the time the tobacco is moved from the floor of the warehouse. In case the customer accepts the sale, the tobacco is moved from the floor within a few minutes but if he hesitates and refuses to have the expenses figured he has all day in which to reject the sale. If the customer is not present the sale is completed immediately (R. 11-12).

The government inspectors usually pull a handful of tobacco out of each pile and throw it back on the pile. This is the only complaint that has been made to me (R. 11-12). I have competent men to place the tobacco on the floor and was not put to any additional expense in having men rearrange the tobacco after the government inspectors got through with it (R. 12-13).

I estimate that I sold 5% of Virginia tobacco (R. 13).

My real objection to federal inspection of tobacco was that my neighboring markets told the farmers that if they took tobacco to me, it would be graded and torn up by government inspectors (R. 13). My neighboring markets are Henderson and Durham. Oxford is between the two markets (R. 13).

In Durham they put on three sets of buyers during the season and in Oxford we have two. A man could go to Durham instead of Oxford and get his tobacco sold faster. My brother, E. M. Currin, is 25 miles closer to Durham than he is to Oxford. He sold his tobacco in Fuquay Springs (R. 13-14).

The 1936 crop was poor due to weather conditions and it was natural that I would sell less tobacco than in 1935 (R. 15). From the opening of the market until the first of November and for a considerable time thereafter over ½ the sale days were blocked and there were a large number of days when the sales were heavy in addition

D. F. CURRIN

S. M. CUTTS

to block sales (R. 16). I could not have handled more tobacco with two sets of buyers. The Oxford Market was unable to secure three sets of buyers and when we had blocked sales in Oxford to some extent it forced (68) people who came to Oxford to go to Durham where they could sell more rapidly (R. 15-17).

Our chief buyers are the Imperial Tobacco Company, American, Liggett & Meyers, and R. J. Reynolds Tobacco Company. We also have some independent dealers such as W. A. Adams Co., and Ellis M. Pen Tobacco Company. These companies deal in export leaf (R. 17). The R. J. Reynolds Tobacco Company has its factory at Winston-Salem and has a manufacturing plant in Kentucky. The American Tobacco Company has plants in various places including Durham, Reidsville and Richmond, Virginia. Liggett & Meyers has a factory in Durham and in Richmond. The Imperial Tobacco Company has no plants in this country and the Adams Company is a dealer buying for foreign concerns. The Pen Company is also engaged in foreign trade (R. 17-18).

RE-DIRECT EXAMINATION

Prior to the time the injunction was granted very few of my brother's tenants sold tobacco through me but more of them sold with me afterwards (R. 19).

Mr. S. M. Cutts.

DIRECT EXAMINATION

I am one of the complainants in this action and in the fall of 1936 was one of the partners of the Fleming Warehouse engaged in the business of selling leaf tobacco at auction (R. 21).

Some of my former patrons complained to me that they didn't like government grading (R. 21).

CROSS EXAMINATION

(Witness could only name one person out of 3,000 or 4,000 customers who had complained to him and that

person did not refuse to bring tobacco to the Oxford markets. (R. 22-25).

Mr. C. R. Watkins.

DIRECT EXAMINATION

I am one of the complainants in this action and at the (69) time suit was brought I was connected with the Johnson Warehouse (R. 26).

In 1936 a Mr. Ellington refused to bring tobacco to the warehouse, assigning as his reason that he objected to the inspection. In 1934 and 1935 I sold 90% of Mr. Ellington's crop. In 1936 I did not sell any of it (R. 26-27). In addition to this complaint we had a number of other complaints (R. 27).

The Johnson Warehouse cost approximately \$40,000 and contains 23,000 square feet of floor space (R. 27).

CROSS EXAMINATION

I have been operating Johnson's Warehouse for five seasons and did not have any employees to go along behind the inspectors before the auctioneer arrived to arrange or re-arrange any piles of tobacco. The inspection and grading service was furnished without direct expense with the exception of the extra cost of tickets and providing a place where the government grade could be entered (R. 28).

I do not know of any growers who brought their tobacco to my warehouse by reason of the fact that I had federal grading and inspection service (R. 28).

My warehouse had two or three thousand customers in 1936 (R. 29).

(The defendants moved to dismiss the bill of complaint for the reason that the plaintiffs have failed to offer evidence upon which the court can base a finding that they have sustained any injury or were in imminent danger of sustaining any injury. For the present the motion is overruled and defendants excepted.)

Mr. William Robert Wilson.

DIRECT EXAMINATION

I live in Keysville, Virginia, and am employed by the (70) Department of Agriculture in the supervision and inspection of tobacco. I supervise and inspect tobacco in Oxford and other flue-cured markets. I have been with the Department since 1929 engaged in similar work, and before that time was in the tobacco business buying and grading for a cooperative association. Prior to that I was engaged in farming and raising tobacco (R. 30). I have nine inspectors under my supervision (R. 31).

I am familiar with the auction sale system of selling tobacco and know how the system works. All markets are trying to get as much growers' tobacco in as they can. There are seven warehouses operating in Oxford (R. 31). The grower brings his tobacco in to the warehouse where it is unloaded usually in a basket and takes it off the truck or wagon. It is tied in bundles or hands and is packed on the baskets usually by the warehousemen. The tobacco is then weighed by an employee of the warehouse and placed on the floor (R. 32). This is all done under the supervision of the warehouse people. A ticket is placed on each pile. (Defendants' exhibit No. 2 is introduced in evidence). The piles are arranged in the warehouse in rows with an aisle-way between (R. 33-34). Sales usually start at nine in the morning. The warehousemen and auctioneer and his assistants, together with the buyers, are present (R. 34). The warehouseman and his employees stand on one side of the row and the buyers on the other. It is customary for the person running the sale to make the opening bid. After the pile has been sold the auctioneer announces the purchaser, and the ticket marker places the name of the buyer, the price and the buyer's grade on the warehouse ticket (R. 35). The minimum speed at Oxford at which tobacco is sold is 360 piles per hour and some auctioneers sell faster (P.36). I attended one sale (71) where a certain row was sold at the rate of 525 piles per hour. The sale goes so fast it is difficult to tell

what pile is being sold (R. 35-36). It is doubtful whether people unfamiliar with an auction sale would be able to understand what the auctioneer says (R. 36). The buyers sample the tobacco by pulling out some from the pile and looking at it as the sale goes along, but in some instances many of them are not close enough to reach a pile (R. 37). There is a definite system of bidding known to the tobacco trade, and a buyer may make a bid by a motion of his head, his hand or a wink of his eye. Immediately after a sale is made the warehouse employees make a calculation of how much each pile of tobacco is bringing and also a calculation for the record of the warehousemen (R. 37). These calculators may be 25 or 30 baskets behind of the sale. A buyer may reject the sale by folding the ticket and laying it back on the pile. This must be done before the tobacco is removed from the floor (R. 38). The buyer may re-offer the tobacco, carry it to another warehouse or take it back home and wait for some other time to market it (R. 39).

At the opening of the season the different tobacco houses rotate as to what are known as first sales. There are two sets of buyers on the Oxford market (R. 39). The supervisor of sales calculates how many baskets each warehouse could sell in a given number of hours at the rate of 360 piles to the hour, and the length of selling time accorded each warehouse is allowed according to the floor space (R. 39-40). The sale in any given warehouse lasts as long as they have tobacco to sell or until the time allotted has been consumed. From there the sale moves to the house that normally gets the second sale. By the term "block sales" is meant that there is more tobacco offered for sale on a particular day than can be sold that day during the sales hours (R. 40).

There are two sets of buyers in the Henderson market, five in the Wilson market, and there were three in the Durham market the past season (R. 40-41).

The Federal inspectors begin examining the tobacco (72) about an hour before sale time (R. 41). After examination tickets indicating the grade are placed on the piles (R. 42). The inspectors examine the piles by pulling samples from each pile, usually two or three samples (R. 42). The ticket indicates the owner, the weight and the government grade (R. 42).

Each day there is displayed in the warehouse a daily report indicating the average price for the various government grades of tobacco sold on the previous day. Weekly reports are also issued showing the average price for the various government grades for the previous week (R. 43).

After the tobacco has been sold it is taken by the buyer to his place of business to be reconditioned or packed for shipment. The buyer's employees remove the tobacco from the floor of the warehouse (R. 43). The buyer's purchases are commingled (R. 44).

After the inspectors have removed samples from the piles they are then placed back on the piles in as neat a manner as possible. (R. 44). Prior to November 1, 1936, fourteen instances of complaints were reported to me, and only one case in November (R. 45).

There were approximately 8,500 ballots sent out for the referendum in connection with the Oxford market to growers who sold on the Oxford market in the season of 1935-1936. (R. 46). It is my opinion from my observation that more growers dealt on the Oxford market in 1936-1937. Up to November 1, 1936, the market was blocked for thirteen days, and between the 1st and 5th of November there was one additional day, making a total of fourteen. During that period there were thirty-four sale days. On ten of those days sales were very heavy. On six days, sales were fairly heavy, and on three days they were light (R. 47). From November 5th to Thanksgiving the market was blocked five days. On two days sales were heavy, and on three days sales were fairly heavy. (R. 47-48). Between November 5th and Thanksgiving closing there were fourteen sale days.

CROSS EXAMINATION

The buyers, after the tobacco is piled on the warehouse floor, come in and inspect it (R. 50). I do not know whether any of the tobacco buyers use the government grade in grading the tobacco that they buy (R. 51).

The sale is not completed until the grower accepts or rejects the bid (R. 52).

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CHARLES E. GAGE

Frequently tobacco sold at auction on the Oxford market brought more than the government grade on that tobacco for the preceding day and frequently brought less (R. 53).

Mr. W. H. Rhodes.

DIRECT EXAMINATION

I live in Raleigh and hold the position of statistician for the North Carolina State Department of Agriculture (R. 54). Our department keeps a record of all sales of tobacco as reported from the tobacco warehouses each month and I have the records covering sales at the tobacco warehouses on the Oxford markets for the season 1935 and 1936 (R. 54-55). (Defendant's Exhibit No. 1 is introduced in evidence (R. 56).

CROSS EXAMINATION

There were more pounds of tobacco sold on the Oxford market in 1935-36 than on the market in 1936-37. This is true of practically every market in North Carolina during those seasons. In practically every market in North Carolina the price average regardless of whether the market had compulsory grading or not was better in 1936-37 than in 1935-36 (R. 57).

Mr. Charles E. Gage.

DIRECT EXAMINATION

I live in Virginia and am employed in the Department of Agriculture, Washington, D. C., as senior marketing statistician in charge of the Tobacco Section, Bureau of Agriculture Economics. I have been in government service since 1906 (R. 59). I am familiar with conditions as they exist in the tobacco industry and especially in tobacco auction sales markets. I am author

of a bulletin: American Tobacco Types, Uses and Markets (R. 60-61).

Conditions prevailing on auction markets are such that growers of tobacco are dealing on a market composed of people trained in the characteristics of tobacco from the standpoint of its manufacturing characteristics and are selling it under conditions where they are without ability to obtain information on the particular grade they have to sell or the price which it ought to bring. (R. 61-62). The sale of tobacco takes place at such a rate of speed that few buyers have the opportunity to make a satisfactory examination of the tobacco being sold and consequently many errors are made. The grower suffers by any error which tends to produce a low price. The company is not particularly a sufferer by reason of having paid more than a particular row of tobacco was worth for the reason that they are protected by the average for rows of tobacco sold below the average which buyers were supposed to pay for a certain grade. (R. 62)

The effect of such auction sale is to introduce an unusual degree of uncertainty in the sale of tobacco and the price received for same. As an example on the Oxford market during the week ending October 29, 1936, one company paid for a single grade of tobacco all the way from \$1 to \$6 per hundred pounds. For another grade they paid from \$3 to \$8 per hundred pounds. For other grades from \$4 to \$10.50; from \$5 to \$12; from \$8 to \$22; from \$18 to \$32; from \$34 to \$43; and from \$39 to \$51. Another company paid for different grades during the same week on the same market from \$2.25 to \$7; from \$5 to \$16.50; from \$6.60 to \$16.50; from \$7.74 to \$18; (75) from \$10 to \$29; from \$12 to \$32; from \$15 to \$36; and from \$25 to \$40. This took place on all floors (R. 63-64).

The Tobacco Inspection Act is strictly and solely an informational service for the growers. The buyers are not required to follow the information (R. 65). The quotations that I have been reading are buyers' grades and such variation in buyer's grades would not necessarily be reflected in government grades. (R. 66). It is not unusual for the same pile of tobacco to sell twice inside of fifteen minutes or half an hour for 100% more.

This is not due to competition but just the hazard of the tobacco sales. There is no economic basis for this and the purpose of the Tobacco Inspection Act is to alleviate these conditions (R. 67). (Defendant's Exhibit No. 3 introduced in evidence, being a publication entitled: "The Auction Market" (R. 67). The document that I have been shown is an official document of the United States Government entitled: "Report on Marketing of Leaf Tobacco in the Flu-Cured Districts of the States of North Carolina and Georgia (introduced as Defendant's Exhibit No. 4, R. 68).

There are three types of flu-cured tobacco grown in North Carolina and one type of dry-cured (R. 68). The type of tobacco grown in and around Oxford is flu-cured designated as Type 11, and sometimes Type 11-B, known as the middle-belt flu-cured. The principal use of Type 11-B is in the manufacture of cigarettes although some Type 11-B is used in the manufacture of chewing and smoking tobacco and it is a very important export type (R. 69). In 1935 there were 573,000,000 pounds of flu-cured tobacco grown in North Carolina and about 21% of this was used in manufacturing operations in the state, the other 79% being exported to foreign countries or used in manufacturing operations in other states (R. 69-70). From 1930 to 1935 the portion of the flu-cured group that was exported ranged from about 46% to 83% (76) (R. 71). It is generally considered that Eastern North Carolina tobacco in particular is especially suited to export trade (R. 71).

I made a study of the Oxford market during the week ending October 29, that being the week of quite heavy sales and was the last full week before the injunction in this case was issued. I found that flu-cured tobacco of Type 11-B was dealt in exclusively and that the Oxford market draws tobacco from a group of counties in North Carolina and Virginia centering around Oxford (R. 71-72). The total poundage of tobacco sold on the Oxford market during that week was 2,105,305 pounds, the principal buyers being R. J. Reynolds Tobacco Company, American Tobacco Company, Liggett & Meyers, Adams Tobacco Company, Penn Tobacco Company, Export Leaf Tobacco Company, and Imperial Tobacco Company. The

only manufacturers in this group are the R. J. Reynolds Tobacco Company, American Tobacco Company, and Liggett and Meyers, the others being what is known as independent concerns, some of which are affiliated with holding companies (R. 72-73). The R. J. Reynolds Tobacco Company has its factory in Winston-Salem and all the tobacco purchased by that company was destined for manufacture within the state of North Carolina. During that week they bought 322,808 pounds, or 15.3% of the total sale on the market. The American Tobacco Company and Liggett & Meyers have factories in North Carolina and other states (R. 73-74). American Tobacco Company purchased 85,118 pounds, or 4% of the market that week, and Liggett & Meyers purchased 256,306 or 12.2% of the market for the week (R. 73-74). Adams Company bought 467,023 pounds, or 22.2%; the Penn Tobacco Company 102,610 pounds, or 4.9%; the Export Leaf Company bought 251,506 pounds or 11.9%; the Imperial Tobacco Company bought 492,266 pounds, or 23.4%. (R. 75).

To my knowledge there is only one small company, Taylor Brothers, in Winston-Salem that manufactures tobacco in North Carolina other than the Reynolds Company, Liggett & Meyers, and American Tobacco Company (R. 75).

A study was made after the injunction was issued on (77) November 5 in this case for comparative purposes and between the warehouses consisting of the complainants and the warehouses consisting of non-complainants.

For comparative purposes a similar study of the different sales for the warehouses in Oxford for the preceding marketing season was made (R. 76-77). The comparisons are as follows:

Complainants' Percentage of Total Sales during the 1935-1936 Marketing Season	Operations for the Same Warehousemen during the 1936-1937 Season
59.2% -----	September ----- 61.8%
63.0 -----	October ----- 57.6
60.5 -----	November ----- 57.7
63.7 -----	December ----- 52.8
62.6 -----	January ----- 49.0

The non-complainants' percentages were the complements of those to arrive at 100% and they rose from 38.2% in September to 51% in January (R. 77-78). The study shows that in spite of the fact that the government maintained no inspection at complainant's warehouses from the time of the injunction until now, that the complainant warehousemen sold less than they did during the period of inspection (R. 78-79).

During the season 1935-1936 the producers' sales on the Oxford market to the first of February were 25,748,516 pounds. For the season 1936-1937 they were 20,806,122 pounds, leaving a difference of 4,942,394 pounds. The loss in the complainants' warehouses was 4,065,778 pounds, or 83.6% of the total, the non-complainants losing 876,616 pounds.

CROSS EXAMINATION

There was a loss on market sales after government grading was established on the Oxford market as compared with the previous season when there was no compulsory grading (R. 81). Oxford is located in the middle belt and there are a great many more North Carolina counties in the middle belt than there are Virginia counties (R. 82-83). The Virginia counties in the middle belt participated in the referendum that was taken to establish compulsory grading in the middle belt. (R. 83).

The study I made of the Oxford market during the week of October 25 was taken from the sales coupons representing the actual sales of tobacco which were tabulated and drawn off under my personal supervision (R. 84).

Thirty-five million pounds of flu-cured tobacco is used a year for snuff (R. 84-85).

The Export Leaf Tobacco Company and the Brown-Williamson Tobacco Company are allied companies, the Leaf Tobacco Company being the buyer and the Brown-Williamson Company manufactures part of the tobacco purchased by the Export Leaf Company (R. 85-86). The Brown-Williamson Tobacco Company is located in Louisville, Kentucky (R. 86).

Mr. Frank B. Wilkinson.

DIRECT EXAMINATION

I am employed in the Department of Agriculture as senior marketing specialist of tobacco, in charge of tobacco inspection and the organization program of the Department (R. 87). The document you have just shown me is a pamphlet entitled: "Rules and Regulations of the Secretary of Agriculture under the Tobacco Inspection Act of August 23, 1935, Effective January 2, 1936", and the other printed document is entitled: "United States Department of Agriculture, Bureau of Agricultural Economics—Classification of Leaf Tobacco Covering Classes, Types and Groups of Grades" (R. 88). (Defendants' Exhibits No. 5 and No. 6 are introduced in evidence, R. 88.)

I had charge of the referendum taken under the Tobacco Inspection Act. The law provides that growers who sell tobacco on a market through the previous season according to the records of the Department of Internal Revenue are eligible to vote in the referendum. The temporary office was established in Greensboro, North Carolina, and the names and addresses of every grower who sold tobacco on the Oxford market during the 1935-1936 season was taken from the Internal Revenue records. The record does not show whether a man was a landlord or a tenant, but it does show whether he was a contract signer in the AAA or whether he paid taxes under the Kerr-Smith Act. From these records we mailed under frank the ballot, after having made an announcement that a referendum would be held in the Oxford market. These announcements were released to the press and mailed to the postmasters at all points in the vicinity of Oxford and to the warehousemen and also to every county agent in the states of North Carolina and Virginia. (R. 89-90). The document that I have just been shown is a copy of the announcement released to the press concerning the referendum for the Oxford market (R. 89-90). (Defendants' Exhibit No. 7 was introduced in evidence, R. 90). The ballots con-

tained a brief statement and a return franked envelop addressed to our office. In addition to mailing ballots to every grower on the Internal Revenue records we sent a supply of blank ballots to every county agent with instruction that these be furnished to any grower requesting a ballot, regardless of whether he received one in the mail. We checked for duplicates but wanted every grower to have an opportunity to vote (R. 90). The document that I have just been shown is a copy of a letter sent to the county agents regarding the referendum of the Oxford market (R. 90-91). (Defendants Exhibits No. 8 and No. 9 introduced, R. 91.) We mailed ballots to 8,608 growers who sold on the Oxford market during the previous marketing season, in addition to the ballots that were sent to the county agents in the states of Virginia, South Carolina, and North Carolina. In the Oxford referendum 1,890 ballots were filed, of which 1,782, or 94%, were favorable (R. 92). In addition to these ballots, 248 growers whose names were not found on the Internal Revenue records voted. Of these 96% were favorable. Subsequently the Secretary of (80) Agriculture designated the Oxford market for free and mandatory inspection under the Tobacco Inspection Act (R. 92-93). The document that I have just been shown is the official copy of the Federal Register which includes an order designating the Oxford market (R. 93). (Defendants' Exhibit No. 10 introduced in evidence, R. 94).

A total of 23 markets have been designated throughout the country by order of the Secretary under the Tobacco Inspection Act. Of these it is effective on all but three markets in South Carolina and a portion of the Oxford market. In those instances where it is not effective the courts have granted the warehousemen temporary injunction (R. 94). We conducted referendums in 24 markets and one market out of the 24 voted against the Act, namely, Smithfield, North Carolina (R. 94-95). The fact that the inspectors used on the Oxford market can be used in Georgia or South Carolina markets and then move on to Tennessee and Kentucky was a very important factor in selecting the markets. It was impractical during the first year of operation to select, employ, and train a sufficient number of men to cover all of the North

FRANK B. WILKINSON

WILLIAM LEONARD MITCHELL

Carolina markets. In addition to that, the appropriation was insufficient to pay the salaries of so large a force (R. 96).

CROSS EXAMINATION

The ballots went to 51 counties in North Carolina and about 10 in Virginia. There were 6,712 patrons in the Oxford market who did not signify their wishes on the referendum either pro or con (R. 97-98).

Mr. William Leonard Mitchell.

DIRECT EXAMINATION

I live in Oxford, North Carolina, and operate a warehouse there to sell leaf tobacco. I had compulsory grading and inspection by government inspectors for the (81) 1936-1937 season. I did not have an employee at the warehouse to go along behind the inspectors while they were grading the tobacco and ahead of the auctioneer for the purpose of re-arranging the piles of tobacco. The piles of tobacco in my warehouse were not badly disarranged. The inspectors would pull out a hand of tobacco and examine it, and lay it back on the top of the pile (R. 100). I am not a complainant in this action (R. 101). Two people have told me that they were selling tobacco at my warehouse on account of the federal inspection service (R. 101). Only one man has complained to me that he did not like to have his tobacco graded (R. 101).

CROSS EXAMINATION

Most of the growers cover their tobacco from the time it is placed on the floor until the buyers come along and take it off just before the buyer arrives (R. 102). I believe that the government graders were more particular in the inspection of tobacco after complaints were made (R. 102). I am satisfied with the grading system as far as my warehouse floor is concerned. I signed an agreement along with the four complainants for the reason I was

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MR. GREGORY

led to believe I was the seventh man to sign it and didn't want to hold out on the rest of them (R. 103). I would have been perfectly willing to go in, had all gone in.

RE-DIRECT EXAMINATION

I do not remember any complaint having been made to me by any grower with respect to the manner in which the inspectors or graders were handling the piles of tobacco (R. 102-103). I signed the agreement as I didn't want to block the suit, and was told that they were not going to bring suit unless it was unanimous. Two others besides myself stayed out (R. 103).

Mr. Gregory.

DIRECT EXAMINATION

I live in Oxford, North Carolina, and am engaged in (82) the business of conducting a tobacco auction warehouse. I am connected with the Owens Warehouse No. 1 and Owens Warehouse No. 2, and have been engaged in that business since 1927 and 1928. I am satisfied with the administration of federal inspection and grading of tobacco under the Tobacco Inspection Act and have never had any complaints made directly to me with respect to the grading and inspection, although I have heard of a few indirectly (R. 104). The Oxford Tobacco Board of Trade is composed of buyers, warehousemen, and speculators, some of whom live outside of the State of North Carolina. I am a member of this board of trade and knew practically all of the buyers who were members in 1936-1937. This Tobacco Board of Trade makes rules and regulations with respect to the Oxford market, including rules governing the time of opening and what warehouse will have the first, second, and third sales on different days of the week. The Board of Trade also fixes a minimum rate at which piles of tobacco shall be sold in all warehouses. This minimum rate is 360 piles an hour. (R. 105-107). There were no growers of tobacco represented on the Tobacco Board of Trade (R. 106).

MR. GREGORY

J. W. DEAN

CROSS EXAMINATION

My testimony about the rules and regulations is based on information supplied me from sources other than my actual knowledge.

In 1936 Durham got three sets of buyers in the middle of the season (R. 107). The Oxford warehousemen increased the rate of their sales per hour in order to sell all the tobacco they had on the floor. (R. 108).

The three warehousemen in Oxford that didn't join in this suit were the Mitchell warehouse and Owens No. 1 and No. 2, which were operated by myself and Mr. Watkins. My associates and myself at the time the suit was brought stated that we would be in favor of compulsory grading of tobacco if they had it on all markets, and that is my feeling now (R. 108).

RE-DIRECT EXAMINATION

The rules and regulations promulgated by the Tobacco (83) Board of Trade were observed as far as I know in my warehouse (R. 109).

The Tobacco Board of Trade does not set the opening date, but some other agency does that (R. 109).

RE-CROSS EXAMINATION

For the year 1936 the Oxford Board of Trade employed a sales supervisor, Mr. G. W. Dorsey. He was supposed to have kept the records of average sales on the Oxford market week by week for the season. (R. 109).

Mr. J. W. Dean.

DIRECT EXAMINATION

I live about 4-1/2 miles south of Oxford, in Granville County. My occupation is farming, and in 1936 I cultivated 28 acres of tobacco on the Virginia farm near

Petersburg, Virginia, and 34 acres on another farm about 3 to 5 miles from Oxford. I sold tobacco on the Oxford market and am acquainted with the federal inspection service as it operates at Oxford (R. 110). I have been satisfied with the work that these men do and the inspectors have never seriously disarranged my tobacco in any way. These inspectors have been ready to assist in any way beneficial to the farmer and several times they have helped me. I voted for inspection and so did all of my tenants. I have taken advantage of the informational service that the federal government provides on the Oxford market and recall two instances when a pile of tobacco brought 8 or 8-1/2¢ a pound and that the government rating was 16-1/2¢. I rejected the bid on this pile of tobacco and carried it around ahead of the buyers about three rows where I found a vacancy in a row and 30 or 40 minutes later the same set of buyers bid 20¢ a pound for it. The federal inspectors graded this pile again after it had been moved and I think they placed the same grade-mark on it (R. 111-112).

CROSS EXAMINATION

Prior to the inauguration of compulsory grading I (84) have on numerous occasions moved my tobacco further up on the sale and have received a higher price than was offered the first time when there was no government inspection (R. 112-113).

I am in favor of compulsory grading (R. 113-114). I have contributed money to the attorneys to represent the side of the government in this case (R. 114).

RE-DIRECT EXAMINATION

Prior to the 1936 marketing season, when they had so-called voluntary inspection, I had my tobacco inspected and was charged 5¢ a hundred pounds for that service. Under the present arrangement there is no charge for this service and information supplied by the federal government assisted me in my sale of tobacco and also in deciding to reject sales where the price did not reasonably conform to the Government grade. (R. 115).

RE-CROSS EXAMINATION

Prior to the present season there was one year when we could get our tobacco graded for nothing, but several years we had to pay for it. This grading was optional (R. 115-116).

Mr. R. P. Eakes.

DIRECT EXAMINATION

I live about 13 miles north of Oxford and my occupation is farming. In 1936 I cultivated 11.6 acres and marketed all of my crop in Oxford where it was inspected by federal inspectors prior to its sale. I sold most of my tobacco in Oxford after November 5. I am satisfied (85) with the federal inspection service and have not experienced any trouble with the inspectors disarranging my tobacco. (R. 117).

I remember several times when the federal inspectors assisted me in arranging my tobacco and I always make use of the informational service they furnish. I recall several instances when I used this service to reject a sale. I recall one instance when I rejected a sale of 30¢ when it was government rated around 36 or 37¢. I moved that pile of tobacco in front of the sale and got 38¢ for it (R. 118). I recall another time when I rejected a sale on a pile that brought 6¢ and was government rated at 12¢. I put that tobacco in front of the sale and got 27¢ for it (R. 118). Another time I was offered 5¢ for some tobacco that was government graded and later sold it for 15¢. I was always anxious to get at least as much as the government grade (R. 119).

Prior to 1936 I always used the optional grading service and paid the small fee that was charged (R. 119).

CROSS EXAMINATION

I have been raising tobacco all my life and always know what it ought to bring, although sometimes it brings less than I thought it should (R. 119-120). I do

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R. P. EAKES
T. G. CURRAN
MR. BRYANT
MR. BARNES

not believe that my tobacco brought more than the government grade oftener than it brought less as I did not reject sales when they were close to the government grade (R. 120).

I have often moved my tobacco at a sale but have never moved it as much as under the inspection service, as the government grading has helped me in that it shows what a pile of tobacco is worth where in former years I might have rejected the wrong sales and used poor judgment (R. 121). I am in favor of compulsory grading (R. 122-123).

I have contributed some money to employ lawyers in this case (R. 123).

RE-DIRECT EXAMINATION

During the year I rejected sale on approximately 2, (86) 000 pounds of tobacco and gained on the second sale of it a little over \$250. The total amount of tobacco raised on the 11.6 acres was 13 or 14 thousand pounds (R. 123-124).

RE-CROSS EXAMINATION

I think most of the tobacco was sold at about the government grade except the \$27 pile and the \$15 pile I told about. Most of my gain came from those two piles of tobacco (R. 124).

Mr. T. G. Curran.

(Respondents tender Mr. Curran and state that he would testify substantially to what the previous two witnesses testified to. Respondents have three other tobacco growers who will testify to substantially the same thing as the two preceding witnesses and these are tendered for cross examination, the witnesses being:

Mr. Bryant

Mr. Barnes

MR. ARNOLD

MR. BRYANT

Mr. Arnold (except Mr. Arnold would testify as follows: (R. 125)):

DIRECT EXAMINATION

I brought tobacco to the Oxford market this year because of the government grading. I did not bring my entire crop to Oxford because the market was congested and sold part of it in Durham and part in Hillsboro (R. 125).

CROSS EXAMINATION

I live 16 miles north of Raleigh on the road leading to Oxford in Wake County. I live 15 miles from Durham and 30 miles from Oxford. I sold tobacco on the Oxford market prior to 1936 and was provided with a ballot, and voted for Oxford to have federal inspection (R. 126).

Mr. Bryant.

(This witness' testimony is the same as Mr. Eakes' and Mr. Dean's, except the following):

DIRECT EXAMINATION

I have directed that some of my tobacco be moved (87) from one of complainants' warehouses to one of non-complainants' warehouses because of federal inspection service in the non-complainants' warehouses. I moved it partly because my tenant said he wanted to move because of government grading (R. 127-128).

CROSS EXAMINATION

After the hearing of this case in the federal court at Raleigh I stated that I was going to bring my tobacco where it was graded. (R. 128). I contributed some money to help pay lawyers in this case. (R. 129).

RE-DIRECT EXAMINATION

I said I was going to move my tobacco and I did move it (R. 129).

Mr. John S. Watkins.

DIRECT EXAMINATION

I live about 12 miles north of Oxford and am engaged in the warehouse business, operating the Owens Warehouses No. 1 and 2 in Oxford. I have been in this business for 10 years and am associated with Mr. Gregory. I attended meetings of the Tobacco Board of Trade for the year 1936-1937 as a representative of my warehouse. The federal inspection service during the season 1936-1937 has added to my expense in operating a warehouse to the extent of an extra carbon copy and the printing on the upper corner of the ticket which I think is 15¢ or 25¢ a thousand. That is the only extra expense that I know of. We use about 40,000 tickets a year at the two houses which would mean about \$10 additional expense a year for the two houses. The inspection service has interfered in no way with the employees of my warehouse in the performance of their duties (R. 130-131).

CROSS EXAMINATION

I am one of the three warehousemen in Oxford who (88) did not take part in asking for this injunction and I am in favor of tobacco grading (R. 132).

Mr. W. H. Rhodes.

DIRECT EXAMINATION

My reports indicate that after the injunction was granted on November 5th the complainants' average price received for tobacco sold on this floor was \$2.79 per hundred more than non-complainants received (R. 133-134).

Mr. Frank B. Wilkinson.

DIRECT EXAMINATION

The document I have been shown is entitled "Official Standard Grades for Flue-Cured Tobacco" prepared under the authority of the Tobacco Inspection Act of August, 1936. (Defendants' Exhibit No. 11 introduced in evidence, R. 135.)

The documents I have shown are United States Department of Agriculture, Bureau of Agriculture Economics "Season Tobacco Market News Report—Type 11 (b)" and a table showing the average prices by grade for tobacco on the Oxford, North Carolina, market for the 1936 season compared with the averages for the 1935 season (R. 136). (Defendants' Exhibit No. 12 introduced in evidence, R. 136.)

CROSS EXAMINATION

The weekly and seasonal averages are compiled under my supervision and direction in Washington, D. C. (R. 136).

Mr. J. W. Dean, (Recalled by plaintiff).

After the injunction was put into effect my tenants (89) and I sold two large truck loads of tobacco on the warehouse floor of Mr. D. F. Currin, one of the complainants in this action. This warehouseman owed me \$1,000 for four years and I had been unable to collect it. He had been after me for some time to sell at his house and I told him I would divide with him that way. He found that I had a load of tobacco ready and came up voluntarily and paid me \$250 on his note and renewed the note for \$750, so I felt it was my obligation to keep my word with him (R. 138). This note was renewed a short while before the sale of the first load (R. 140). After November 5 I sold 934 pounds of tobacco on the warehouse floors where government grading was continued (R. 140-141).

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MR. HAMLET
JOHN S. WATKINS
J. C. ADCOCK

I voted for grading and so did my tenants (R. 143-144). The two lots of tobacco that I sold with complainants was one-half share croppers', who had voted in the referendum (R. 144).

Mr. Hamlet.

DIRECT EXAMINATION

I was bookkeeper and accountant at Johnston's warehouse during the 1936-1937 marketing season. I made a tabulation of the books of the warehouse (R. 145-146). The documents that I have brought into court are the tabulation I prepared. (Defendants' Exhibit No. 13 identified, R. 146.)

Mr. John S. Watkins.

DIRECT EXAMINATION

I am one of the proprietors of Owens Warehouse No. (90) 1 and No. 2 in Oxford and was served with a subpoena duces tecum (R. 147). The documents that I have brought into court in response to a subpoena to produce certain books and records are a tabulation of the amount in pounds, the amount in dollars, and the name of the buyer of tobacco offered for sale for Owens Warehouses Nos. 1 and 2 during the 1936-37 marketing season. (Defendants' Exhibit No. 14A and Exhibit No. 14 introduced in evidence, R. 147).

CROSS EXAMINATION

These records were kept by my bookkeeper under my supervision and I looked them over daily and am personally familiar with them, and can vouch for their correctness (R. 148-150).

Mr. J. C. Adcock.

DIRECT EXAMINATION

I am one of the proprietors and served in the capacity

of bookman and assistant bookkeeper during the 1936-1937 season in the Mangum warehouse in Oxford. I was served with subpoena duces tecum to bring the books and records of the warehouse (R. 150). The statement I have had prepared and have brought into court in response to subpoena duces tecum shows the names of the buyers, the number of pounds purchased, and the amount paid for tobacco sold during the 1936-1937 season at the Mangum warehouse. (Defendants' Exhibit No. 15 introduced in evidence, R. 150).

CROSS EXAMINATION

I am a member of the Tobacco Board of Trade of Oxford and am president of the Board. I am acquainted with Mr. G. H. Dorsey who was sales supervisor with the (91) Tobacco Board of Trade during the 1936-1937 season (R. 151). These records were compiled by Mr. Dorsey (R. 152).

There were 8,399,906 pounds of tobacco sold on the warehouse floors of complainants from the opening of the market through November 6, 1936. During the same period of time there were 6,095,264 pounds sold on the warehouse floors of non-complaining warehousemen in Oxford. The average price paid by purchasers to the complaining warehousemen per hundred pounds was \$25.23. The average price paid to the non-complaining warehousemen per hundred pounds was \$24.43. The difference between non-complainants and complainants was 80¢ (R. 152-153).

After November 6 there were 5,059,432 pounds of tobacco sold on the warehouse floors of the complainants until the close of the market. During the same period of time there were 4,011,292 sold on the warehouse floors of non-complainants. The average price paid by purchasers for tobacco on warehouse floors of complainants was \$22.43 while the average price paid by purchasers of tobacco sold on the warehouse floors of non complainants was \$19.74, being a difference of \$2.69 (R. 153-154). This made a difference of \$136,098.72 received from purchasers on tobacco sold on the warehouse floors of complainants (R. 154). The warehouseman receives a commission of 2-1/2% which would be \$3,402.45 based on the figure of \$136,098.72 (R. 155).

RE-DIRECT EXAMINATION

These figures included tobacco that may have been sold two or three times and my compilation is based entirely on the number of pounds sold and the price paid, irrespective of the quality of the grade (R. 166). The only record of grade that is kept is the government grade placed on the sales ticket (R. 168-169).

There was voluntary grading of tobacco on the warehouse floors of the Mangum warehouse prior to 1936-1937 (R. 169). One year we charged 10¢ a hundred and (92) then other years 5¢ a hundred for this grading and the charge was paid by the farmer (R. 169-170). During the years of voluntary grading and inspection a space was provided on the ticket for the government grade to be entered. This was voluntarily done by the warehousemen (R. 170).

There was no difference in the method of grading when we had voluntary inspection than there is under the new act, except during the 1936-1937 season the inspectors graded all the piles of tobacco (R. 170). We made no complaint during the 1935 season, with respect to grading and inspection (R. 171).

RE-CROSS EXAMINATION

The only objection I have to the grading is that it is compulsory and I think that the compulsory grading of tobacco on the Oxford market is injurious (R. 172). The Durham market is 30 miles from Oxford and the Henderson market about 12 miles. The market at Clarksville, Virginia, about 25 miles distant, is a competitor of the Oxford market. Durham and Henderson are serious competitors of the Oxford market (R. 173).

During the 1936-1937 season the average price on the Durham and Henderson markets was higher than the average price on the Oxford market (R. 173).

During the 1936-1937 season the four complaining warehouses sold 11,448,338 pounds of tobacco, which would necessitate the use of 100,000 tickets at an additional cost of \$100 due to Government grading (R. 174-175).

During the two years when grading of tobacco on the

J. C. ADCOCK
JAMES L. MORROW
CHARLES E. GAGE

Oxford market was optional about 10% of the tobacco we sold was graded (R. 175-176).

RE-DIRECT EXAMINATION

During the 1935 season when there was no charge for grading a large percent of the farmers had their tobacco graded (R. 176-177). There was no difference in cost of tickets during the 1936 season when we had compulsory grading over the seasons we had voluntary grading (R. 177-178).

The tobacco offered for sale during the closing days (93) of the season is not of such good quality as that offered during the middle of the season and the average price is not so high (R. 178).

Mr. James L. Morrow.

DIRECT EXAMINATION

I live in Washington, D. C., and am employed in the Tobacco Section, Department of Agriculture, connected with the market news work, handling orderly reports of dealers and manufacturers. The document that I have been shown is a tabulation made under my direction with respect to the Mangum warehouse and previously identified by Mr. Adcock (R. 180). (Defendants' Exhibit No. 13 offered in evidence, R. 181).

Mr. Charles E. Gage, (Recalled by defendants).

DIRECT EXAMINATION

Two conditions can cause a change or disparity in the average price paid over a period of time on two groups of warehouses in the same market. One would be a different average price paid per unit of tobacco; the other would be, assuming the same price per unit of tobacco, a difference in the average quality (R. 183). During the 1936-1937 selling season on the Oxford market there was a difference in the average price between complaining warehouses and non-complaining warehouses because from time to time the percentage of total sales of to-

bacco at Oxford shifted so that in the early part of the period after November the complaining warehousemen had a larger percentage of sales and their percentage (94) dwindles to less than one-half at the close of the season. The average quality and average price of the tobacco sold on the Oxford market decreased toward the close of the tobacco selling season. The effect was that as the season progressed the sales percentages going to the non-complaining warehouses involved a lower grade and lower price tobacco. The total operations, therefore, would reflect a difference in the average price for over a period of two or three months (R. 184).

CROSS EXAMINATION

Towards the end of the season it always happens that an inferior grade of tobacco is sold (R. 185). The complaining warehouses have a larger floor space than the non-complaining warehouses, and normally sell more tobacco (R. 186). I made a study of the operations over a period of two years, and during 1935-1936 the consistent ratio of 60 to 62% of the sales of the market was maintained by the complaining warehouses. In 1936-1937 they started out with a similar ratio, but after the month of November they fell off to 49%. The complaining warehousemen enjoyed the largest percentage of sales during the period when the prices were high (R. 187-188). I don't recall that the non-complainants' business increased in price, but it did increase in percentage of sales (R. 189).

Prior to the injunction complainants were doing more than 50% of the business. There were four of them and three of the others. After the month of November their percentage of total sales decreased month by month until in January it was 49% of the market, whereas non-complainants increased to 51% from around 43% (R. 190).

Respectfully submitted,

ROYSTER & ROYSTER,
Attorneys for Complainants.

JOHN H. MANNING,
Assistant United States Attorney
of Counsel for Respondents.

The foregoing is hereby approved, this the 8th day of July, 1937.

I. M. MEEKINS,
United States District Judge.

OPINION.

(95)

Filed Apr. 19, 1937.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF NORTH CAROLINA,
RALEIGH DIVISION.

D. T. Currin, S. M. Cutts, and H. A. Averett, Doing Business as Fleming Warehouse, Oxford, North Carolina, H. L. Thomasson, T. B. Williams and J. C. Adcock, Doing Business as Mangum Warehouse, Oxford, North Carolina, C. R. Watkins and J. R. Watkins, Doing Business as The Johnson Warehouse, Oxford, North Carolina, and D. F. Currin, Doing Business as Farmers Warehouse, Oxford, North Carolina,

Complainants,

vs.

Henry A. Wallace, Secretary of Agriculture for the United States, and J. O. Carr, United States District Attorney for the Eastern District of North Carolina, and W. R. Wilson, Agent and Representative of the Secretary of Agriculture for the United States and in Charge of the Grading of Tobacco Upon the Oxford Tobacco Market,

Respondents.

It is well to state the brief history of this Cause, particularly important for that it involves the constitutionality of an Act of The Congress, and it is as follows:

On Saturday, October 24, 1936, Complainants, without notice to Respondents, filed a complaint and prayed that Respondents be restrained from compulsory inspection of tobacco upon the floors of Complainants. Though it was earnestly insisted by counsel for Complainants that they were entitled, as a matter of right in the circumstances, to the relief sought, the prayer for an injunction without notice was refused. Instead, a Show Cause Order was entered returnable at Raleigh November 5, 1936. This Order gave Respondents more than ten days in which to prepare for the hearing or move for an adjournment.

On November 5th Respondents appeared at Raleigh (96) pursuant to notice and announced their readiness to proceed after Respondent Henry A. Wallace, Secretary of Agriculture, entered a special appearance and moved to dismiss as to him. No motion was made for an adjournment and no intimation that such was desired.

At the close of the testimony and after arguments of counsel were concluded, it was announced from the bench then: "The Act is unconstitutional; discriminating in its provisions and confiscatory in its application".

Respondents did not appeal from the decision made at Raleigh, November 5, 1936. They elected to answer and have the Cause heard on the merits. Upon request of Respondents extensions were granted, from time to time, in which to file answer.

The Special Term was held at Elizabeth City, February 15, 1937, having been ordered, as stated, at the request of Respondents. The hearing was reported. At the close of the testimony it was, by consent of the parties, agreed (97) that decision be withheld until the evidence taken could be transcribed by the court reporter. After the transcript had been made and furnished to Complainants and Respondents, Respondents requested further time in which to file additional brief.

The brief of Respondents was presented on the 2nd day of April, 1937, and this Opinion is being entered today—19th day of April, 1937, seventeen days after the brief was presented and considered.

The Cause was instituted for the purpose of securing an Order restraining the enforcement of the Tobacco Inspection Act—Public No. 134-74th Congress.—H. R. 8026, and the rules and regulations promulgated thereunder, with regard to Federal inspection of tobacco in the warehouses of Complainants situated in Oxford, North Carolina, pending final determination upon the merits.

FINDINGS OF FACT.

The Bill shows:

1. That Complainants are engaged in selling tobacco at auction at the instance of the owner and at a price fixed by the State of North Carolina, for the profit and benefit of themselves; each being *intrastate* in character and engaged exclusively in an *intrastate* enterprise—the auction sale of tobacco upon the warehouse floors—and are neither owners nor buyers of the tobacco sold by them upon their floor.
2. That pursuant to and in consequence of the Tobacco Inspection Act, and the rules and regulations promulgated thereunder by the Secretary of Agriculture, all tobacco sold by Complainants at auction for their patrons during the tobacco season of 1936-1937 was required to be inspected by employees and representatives of Respondent, the Secretary of Agriculture, before it was sold.
3. That Oxford is one of the three tobacco markets within the State of North Carolina where Federal inspection of tobacco prior to its sale on the floor of a tobacco warehouse is required; the other two markets are Goldsboro and Farmville.
4. That there are more than fifty (50) tobacco warehouses in North Carolina where millions of pounds of tobacco have been sold and will be sold during the remaining portion of the 1936-1937 tobacco season and that

at none of these many markets is Federal inspection of tobacco required.

5. That numerous individuals, firms and corporations within the State of North Carolina, where tobacco markets are maintained, other than at Oxford, Goldsboro and Farmville, are engaged in precisely the same character of business as Complainants, who sell tobacco at auction on their respective warehouse floors for the profit and benefit to themselves where Federal inspection is not required.

6. That many of the patrons of Complainants favor inspection and many of them are opposed to it, and that in consequence of the opposition of growers, who are patrons of Complainants, to Federal inspection, Complainants have lost substantial business and therefore substantial sums of money; have suffered and sustained, and will continue to suffer and sustain irreparable loss and damage unless restrained as prayed in the Bill and have no adequate remedy at law.

At the hearing it developed from the proof through affidavits which are a part of the Record and statements of counsel which were either admitted or not denied:

A. That a large quantity of the tobacco thus far sold (99) by Complainants during the tobacco season of 1936-1937 was brought by growers from the State of Virginia to the warehouses of Complainants and there sold at auction after required Federal inspection.

B. That a large quantity of the tobacco brought to the warehouses of Complainants and sold at auction after required Federal inspection was delivered by growers who are residents and citizens of the State of North Carolina and whose tobacco was seeded, set out, grown, harvested, cured and placed upon the floors of the warehouses of Complainants direct from barn to warehouse, the entire transaction being solely within the State of North Carolina.

C. That the grower retains his title and his control of his tobacco until he accepts payment from the purchaser. If the grower's tobacco fails to sell for a satis-

factory price he may withdraw it from the warehouse floor and take it home, without any expense of sale, and wait for a more favorable market.

The facts in this Cause are respectively set forth in the above sections 1 to 6, both inclusive, as shown by the averments in the Bill, and in sections A. to C., both inclusive, as shown by the proof adduced at the hearing apart from or in addition to the averments in the Bill, and I so find.

CONCLUSIONS OF LAW

1. That the tobacco placed upon the floors of Complainants and sold after the required inspection, which was brought to Complainants by growers and owners from the State of Virginia, is interstate in character.
2. That the tobacco placed upon the floors of Complainants and sold after the required inspection, which was seeded, set out, grown, harvested, cured and taken to market wholly within the State of North Carolina, is intrastate in character.
3. That the Tobacco Inspection Act is unconstitutional in its substance and materially discriminating in its application. Materially discriminating for that the required Federal inspection of tobacco on the floors of Complainants is not required at any of the other tobacco markets in North Carolina (except at Goldsboro and Farmville) and this material discrimination against Complainants is without any valid factual reason and is without affirmative significance in law or equity and cannot be enforced in the circumstances present in this Cause.

OPINION

1. Obviously, the tobacco placed upon the floors of Complainants which was brought from Virginia is interstate in character and therefore subject to required Federal inspection by virtue of the Commerce Clause of the Constitution. Sufficient authority for this position is the Gibbons case and subsequent cases on the same point in an unbroken line to date. If no other factor

were involved in the equations, clearly the relief prayed should be denied and the Bill dismissed. But if there be material discrimination against Complainants, they are entitled to the relief which they seek, at least in part, notwithstanding the interstate character of the Virginia (101) tobacco. Discussion of discrimination is pre-termitted for the moment.

2. The North Carolina tobacco placed upon the floors of Complainants is *intrastate* in character, and therefore not subject to required Federal inspection. It was seeded, set out, cultivated, harvested, cured and taken to Complainants' floors over a North Carolina highway wholly within the State. Moreover, a large quantity of that particular tobacco will never enter the channels of interstate trade, for that it is taken to Durham, Winston-Salem and other local North Carolina markets where it is manipulated from its natural state into manufactured articles such as chewing and smoking tobacco, cigarettes and cigars, which are sold by the manufacturer to local North Carolina shoppers and in turn sold by them direct to local consumers.

The position of learned counsel for Respondents that tobacco is inherently an *interstate* commodity, though boldly advanced and plausibly maintained, is without merit. There is wealth of authority that *cotton* is not inherently an *interstate* commodity. The grower's cotton in his bin or in his gin or in his storage house or in a local bonded warehouse is *intrastate* in character and takes on an *interstate* character only when it begins to move in interstate commerce. Once it assumes *interstate* character, cotton may move as slowly as the proverbial snail; it may come to rest in many places within and without the State of initial motion and not lose its assumed character. Once placed in the channels of interstate commerce, cotton, or any other commodity or thing in transit, moves on as such to its ultimate destination. If cotton is not inherently an *interstate* commodity, how can tobacco be? Upon what theory can tobacco (102) be distinguished from cotton with this regard? The plain answer is: it can not.

The title and control of the grower's tobacco does not pass from him even after sale at auction unless and until he accepts the purchase price. Until then the grower may withdraw his tobacco from the warehouse

floor, take it home and hope for a more favorable market.

Tobacco becomes *interstate* in character contemporaneously with the consummation of its delivery to the purchaser who buys it to send forth in the channels of interstate trade. A local grower on his way to a local market with a truck load of local tobacco which he intends to offer for sale on a local warehouse floor is held up by a highwayman and forcibly relieved of his load. Upon apprehension, will the highwayman be subject to prosecution in the State or Federal Jurisdiction? Obviously, the prosecution would fall within the Jurisdiction of the State wherein the crime was committed. A person steals an automobile from the garage of the owner and drives it away without crossing a state line. Would that be a violation of the Dyer Act? The plain answer is: no.

The right of control of commodities such as tobacco, cotton and other commerce until placed in the channels of interstate trade is one of the many rights not delegated to the Federal Government, but expressly reserved to the States by the Tenth Amendment.

3. For the sake of the argument, concede that *all* of the tobacco, Virginia and North Carolina, sold by Complainants is inherently an *interstate* commodity, then Complainants are entitled, at least in part, to the relief (103) which they pray because of the material discrimination disclosed in this cause. Manifestly, the discrimination is not passive, but active, and is without pretense or subtlety.

No matter how well-founded its power, the Government must use it in full accord with the principle of equal rights to all and special privileges to none, not giving to one citizen a load and to another a stone. It must treat equally and alike each of its citizens engaged in a common enterprize. Material discrimination between citizens of the same class, that is to say, citizens engaged in like business, cannot be enforced, and its attempted indulgence, however paternal the thought or beneficent the purpose, when challenged must yield. There is no provision, so far, for right-handed selection from those of the same class, as there was none in the New Spiritual Kingdom set up in the beginning of the first century. Indeed, the Old Dispensation commands: "Thou shalt not respect the person of the poor nor honor the person of

the mighty''. Equal right has come down the centuries. Battles enough have been fought for it, but not one in vain.

To say to the warehousemen in Oxford, Goldsboro and Farmville: thou shalt not, and to all the others in the same belt, if, indeed, not in the same zone, and engaged in the same enterprize: thou mayest, is to make heavy the passive non-resistance of the citizen who looks to the Constitution as his refuge and his sanctuary.

The argument that Federal inspection of tobacco on Complainants' floors is not compulsory, but voluntary, though plausible, is specious. True, the grower in many instances has requested and Respondents have furnished inspection. As between the grower and Respondents the same or similar controversy present here could not arise. The controversy is not between the grower and Respondents, but between Complainants and Respondents. Complainants have not requested inspection and Respondents have furnished none to them. Respondents maintain inspection upon the floors of Complainants against their will and over their protests. To concede the argument that inspection of the grower's tobacco is voluntary does not save the point. Why? Because Complainants *must* place the grower's tobacco upon their floors subject to inspection or refuse to accept it for sale. If they accept the tobacco subject to inspection, the grower who is opposed to it goes elsewhere—to one of the many non-inspection near-by markets. If Complainants refuse to accept the grower's tobacco who favors inspection, he likewise may go elsewhere, if for no other purpose than to emphasize his support of inspection and at the same time gratify his very natural human impulse to get even with the warehouseman—punish his friendly enemy, to indulge a paradox. It is in this precise dilemma that Complainants find themselves and herein lies the great pitch and moment of the discrimination complained of. There they are, much like Mahomet's coffin. Either course they elect to follow leads to a cul-de-sac. If Complainants refuse inspection, they offend; if they indulge it, they offend. Here's the threat, the club and the rub. The problem of Complainants is not unlike that presented in the Agriculture Adjustment Act and the so-called Bankhead Act auxiliary thereto. The Cotton grower who did not sign-up was subject to a penalty, called a tax, of

(105) some \$25 a bale on his cotton. In spite of this provision of the act, it was contended that the sign-up was voluntary on the part of those who went in. The Courts were of the opinion, and so decided, that to call a penalty a tax does not make it a tax; that a penalty is a threat and that to act pursuant to or under a threat is inconsistent with voluntary action. It is to be noted that after a brief period the Bankhead Act was repealed upon recommendation of the President.

Powerful as the Government is, it cannot exercise even its power to tax except upon the principle of equality to all—uniformity—so that it will fall upon each payer equally and alike or its levy is void. How less can the Government say to Complainants, you must allow inspection of tobacco on your floors before sale, and, at the same time, say to the some forty-seven or more other local warehousemen, you may sell on your floors without inspection? If this is not illegal discrimination, then what is, or what could be? To clamp the lid down on Complainants and at the same time permit their some forty-seven or more competitors to maintain an open sesame to all growers is contrary to both the letter and the spirit of equal rights uniformly applied.

The Tobacco Inspection Act is not an act to aid the collection of revenue as is the Harrison Narcotic Act held constitutional in the Doremus case by a five to four decision. The Tobacco Inspection Act must be sustained, if sustained at all, by the Commerce Clause as is the Pure Food Act which was held constitutional in Weeks vs. United States. The constitutionality of the Tobacco Inspection Act is not only challenged by Complainants in this proceeding but they challenge the unconstitutional application of the Act by Respondents in not maintaining required inspection of tobacco on the floors of the other warehousemen in the same vicinity, community and territory. Even a constitutional act cannot be enforced in an unconstitutional way. A person can be deprived of private property but not without due process of law, private property may be taken for public use but not without just compensation. If the power to deprive and to take is arbitrarily exercised without due process or without just compensation, the net result is a great parade to no purpose. If "the power to tax involves the power to destroy", then how much more, rather than how much less, the power to

discriminate involves the power to confiscate? Discrimination is confiscation. They are twin sisters of evil and can have no rightful place in the scheme of a free society bottomed on equal rights uniformly applied, as in the American Commonwealth.

However constitutional any act of The Congress may be, it must be administered in accord with constitutionally guaranteed rights. To administer it otherwise is repugnant to the constitutional way.

The business of tobacco warehousemen is highly competitive. They not only sharply compete with each other on the same market but with warehousemen on other markets near-by and far away.

The warehouse business is purely a private business, owned exclusively by shareholders in a corporation or as partners in a partnership or as an individual, as the case may be. This business is in no way interdependent or interlocked with the interests of the growers of tobacco but entirely independent of them as such, the business of (107) the grower being one enterprise and that of the warehouseman being quite another. The warehouseman conducts his own business upon the floor of his own warehouse and he is in all respects an intrastate institution. So much so that the State of North Carolina has by Statute regulated the auction sale of tobacco for nearly half a century.

Moreover, in the Burley Tobacco Belt in Kentucky, in the Bright Leaf Tobacco Belt in North Carolina and in the Dark Fired Tobacco Belt in Virginia the service of the warehouseman is indispensable to the tobacco industry in the mentioned belts. The industry in those belts can no more be constructively maintained without the service of the warehouseman than can the vine climb upward without support or a saw mill run without logs. And this service is as important to the grower as to the buyer.

With regard to this particularly necessary factor in the tobacco equation the Congress has not as yet legislated. The warehouseman is not mentioned in all the act, except it is provided in Section 511 g. that he shall furnish sufficient space on the tags to accommodate the registration of the grades of the tobacco sold, et cetera. Why the warehouseman was not otherwise considered by the Congress does not appear. It may have been an oversight; it may not have been thought necessary or even

expedient to do more than was done with regard to the interest of the warehouseman, and it is vain to conjecture. To repeat: they are not charged with any affirmative duty beyond that stated (511 g.) and are left to follow their own inclinations as they may find their interests prompt.

Upon their own floors and in their own houses Com- (108) plainants receive tobacco of an intrastate character in larger proportions than they receive it in interstate trade. Certainly Respondents can exercise no required inspection of the intrastate commodity. How can they exercise control over the interstate product without maintaining the same requirements as to the competitors of Complainants engaged in similar or the same business? To do so places the Government in the position of extending favor to the grower with one hand and of striking down the warehouseman with the other. It is well to help the grower. There is and can be no complaint about that, but the grower cannot be helped if the help sacrifices the rights of others equally entitled to the protection of their property guaranteed by the Constitution.

In Conclusions of Law, Section 3 herein, it is stated that the Tobacco Inspection Act is unconstitutional. A careful study of the Act has led to this conclusion uninfluenced by any consideration other than a calm, unbiased determination to seek the meaning of the Act under the Constitution. To find a way, or make one, may be the privilege of the Legislator but this philosophy can have no place in the orderly consideration and determination of a question by one charged with the duty of judicial interpretation. The duties of the Legislator may be flexible and may, with all propriety, permit him to bend commensurately with the emergency; but the Judge, like Mr. Tulkinghorn, must follow the hard road of duty and exacting probity when he comes upon it, swerving neither to the right nor to the left, and announce the law as he finds it; not as he would have it. The Judge must follow the trail of cold facts and the compulsive course of the law as they lead to Justice (109) administered undismayed by the threat of punishment and uncorrupted by the hope of reward. The framers of the Constitution had this in mind and made the Federal Judiciary independent of both in so far as humanly possible.

The *purpose* of the Tobacco Inspection Act is stated therein in Section 2 (511 a. of Title 7, U. S. C. A.), as follows: "Transactions in tobacco *involving the sale thereof at auction* as commonly conducted at auction markets are affected with a public interest; that such transactions are carried on by tobacco producers generally and by persons engaged in the business of buying and selling tobacco in commerce; that the classification of tobacco according to type, grade and other characteristics *affects the prices received therefor by producers*; that without uniform standards of classification and inspection the evaluation of tobacco is susceptible to speculation, manipulation, and control and unreasonable fluctuations in prices and quality determinations occur which are detrimental to the producers and persons handling tobacco in commerce; *that such fluctuations constitute a burden upon commerce and make the use of uniform standards of classification and inspection imperative for the protection of producers* and others engaged in commerce and the public interest therein". By the terms of the Act, "a transaction in respect to tobacco shall be considered to be in commerce if such tobacco is part of that current in commerce usual in the tobacco industry whereby tobacco or products manufactured therefrom are sent from one state with the expectation that they will end their transit, after purchase, (110) in another, including, in addition to cases within the above general description, all cases where purchase or sale is either for shipment to another state or for manufacture within the state and the shipment outside the state of the products resulting from such manufacture". Subsection (i) of 511 of Title 7, U. S. C. A.

It is apparent from the language of the Act itself that The Congress has sought, through an attempted exercise of the power granted by the Commerce Clause of the Constitution, to stabilize the prices received for tobacco by producers on local auction markets by means of inspection *there* conducted. This constitutes an invasion by The Congress of the Legislative Forum reserved to the several states by the Constitution. It was the evident intention, and with such intention there is no quarrel here, of The Congress to aid the tobacco grower to the extent at least of safe-guarding his right to receive fair value for his product. The Congress must have clearly seen that in extending the desired aid it was dealing

with an intrastate question over which it had no control, as such, and therefore sought to carry the aid to the tobacco grower through the medium or by the vehicle of the Commerce Clause of the Constitution. The vehicle employed by The Congress, however designated and by whom, was not sufficient for the intended purpose. The Butler case and the Guffey case, decided by the Supreme Court, although primarily dealing with questions of tax legislation, tend to support the interpretation of the Tobacco Inspection Act as herein appears.

The case is not presently available, but an illusive fragmentary wraith of memory suggests that in one of the many cases defining the limits of the regulatory power (111) of The Congress over commerce between the states, the late Mr. Justice Holmes, in distinguishing between those things which impose a direct burden upon such commerce, and those which affect it only indirectly, said in substance, if not in his exact words, that all would agree that commerce between the states depended upon nothing so much as upon population, but that no one would contend that, for this reason, The Congress had the power to regulate marriage and divorce.

The Congress was mindful that it could not compel inspection and grading of the grower's tobacco without his consent, hence the referendum. It is provided that if in any zone two-thirds ($\frac{2}{3}$) of the growers thereof voted for free inspection and grading of tobacco the service will be maintained in *that zone* without cost to the grower but not maintained otherwise in any other zone. Herein lies one of the great, if not the greatest weakness of the Act. If Th Congress could not compel inspection and grading without the grower's consent, how can it compel the warehouseman, who has no interest in tobacco, either as grower, owner or buyer, to not only suffer *without* remuneration inspection and grading upon his warehouse floor, and also suffer discrimination, but require him to quarter the Inspectors of the Government in his house and to furnish the necessary conveniences incident to inspection and grading, against his will and over his protest, to his great loss and damage as is alleged, and thus take private property for public use without just compensation? Is it sufficient answer to say: because the method of auction sale of tobacco without Government inspection and grading imposes a burden upon commerce? Clearly, not. If The Congress wished

(112) to relieve commerce of the burden designated in the Act—auction sale of tobacco without inspection and grading—why did it not at the same time authorize suitable Government facilities for that precise purpose instead of placing that burden upon the warehouseman and subject him to a possible prison term if he fails to accept and carry it.

Moreover, just what burden precisely does the free inspection of tobacco lift from commerce? Obviously, the burden is imaginary rather than real. It will not do to accept the shadow and reject the substance.

And the Referendum itself, what about it? The Record discloses that in the zone under consideration the Secretary of Agriculture sent out eight thousand six hundred and eight (8,608) ballots, presumably one ballot to each grower in the zone. A total of one thousand eight hundred and ninety-six (1,896) ballots were returned. Of the ballots returned one thousand seven hundred and eighty-two (1,782) were favorable to compulsory inspection and one hundred and fourteen (114) of the ballots returned were unfavorable. These figures disclose that out of the total tobacco growers of eight thousand six hundred and eight (8,608) in the zone, six thousand nine hundred and twenty-six (6,926) were either opposed or entirely indifferent to compulsory inspection. Seven thousand growers, in round numbers, out of a total of nine thousand, in round numbers, were not sufficiently interested to return a ballot in a postage free envelope furnished for that purpose by the Secretary of Agriculture, except the one hundred and fourteen (114) growers (113) who responded unfavorably, and this notwithstanding the persuasive assurances printed on the back of the ballot. So far as ascertaining the sentiment of the growers in the zone as to compulsory inspection, the straw vote was as great a farce as the Literary Digest poll in 1936.

At the Show Cause hearing at Raleigh, November 5, 1936, the point involving delegation of the legislative power of The Congress to the Secretary of Agriculture was not stressed. However, at the Special Term at Elizabeth City, February 15, 1937, that question was presented with emphasis. It is only to read the Act to conclude that The Congress not only delegated legislative power to the Secretary of Agriculture, but authorized him to re-delegate that power to the grower. The Secre-

tary was empowered to zone the tobacco belts if, when and as he saw fit. Compulsory inspection in the zones established by the Secretary was to be had, however, only if and when two-thirds or more of the growers in a zone voted it. Under the Act, the grower, not The Congress nor the Secretary, decides whether there shall be compulsory inspection. The Congress is without constitutional authority to so delegate its legislative functions. It is only to read the Act to reach this conclusion.

Lemke vs. Farmers Grain Company, 258 U. S., relied on by Respondents is not in point. There, "Complainants, and the other buyers of like character, are owners of elevators and purchasers of grain in North Dakota, to be shipped and sold at terminal markets in other states, the principal markets being at Minneapolis and Duluth". Here, Complainants are the owners of their warehouses but are not buyers of the tobacco that is sold on their floors and shipped to other states and terminals therein. It is stated in Respondents' brief (114) that Complainants are buyers of tobacco sold by them on their floors but nothing in the Record supports the statement. It is not only undisputed, it is admitted that Complainants are merely auctioneers—criers of tobacco—the service being at the instance of the grower-owner who pays a stipulated commission for the service which is fixed by the State of North Carolina. The North Carolina Statute stipulates the amounts Complainants may charge the grower-owner not only for selling, but for weighing his tobacco. This is nothing new. The State has controlled auction sales of tobacco upon warehouse floors for nearly a half century unchallenged. If Complainants are engaged in an interstate business, by what authority can the State of North Carolina exercise control of it? E converso, if Complainants are engaged in an intrastate business, by what authority can The Congress exercise control of it? The answer to these questions is the key to the solution of the problem presently presented in this Cause.

It is reasonable to assume that The Congress was advertent to the North Carolina Statute and reasonable to conclude that The Congress recognized its constitutional limitation with regard to control of Complainants' business. Hence the indirect rather than the direct attempt to control an intrastate business.

The Tobacco Inspection Act is not valid!

110 HENRY A. WALLACE, SECRETARY, ET AL., APPELLANTS,

An Order has been passed consistent with the views expressed and the conclusions reached herein.

ISAAC M. MEEKINS,
United States District Judge.

Done at Elizabeth City, North
Carolina, this the 19th day of
April, 1937.

PERMANENT INJUNCTION.

(115) Filed April 24, 1937.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF NORTH CAROLINA.

D. T. Currin, S. M. Cutts, and H. A.
Averett, doing business as Fleming
Warehouse, Oxford, North Carolina,
H. L. Thomasson, T. B. Williams, and
J. C. Adcock, doing business as Man-
gum Warehouse, Oxford, North Caro-
lina, C. R. Watkins and J. R. Wat-
kins, doing business as the Johnson
Warehouse, Oxford, North Carolina,
and D. F. Currin, doing business as
Farmers Warehouse, Oxford, North
Carolina, Complainants,

vs.

Henry A. Wallace, Secretary of Agri-
culture for the United States, and J.
O. Carr, United States District At-
torney for the Eastern District of
North Carolina, and W. R. Wilson,
Agent and Representative of the
Secretary of Agriculture for the
United States and in charge of the
grading of tobacco upon the Oxford
Tobacco Market, Respondents.

WHEREAS, in the above entitled cause now pending
in the District Court of the United States for the East-

ern District of North Carolina the undersigned Judge, following a hearing of this cause at Raleigh, North Carolina, on November 5, 1936, granted a restraining order restraining the respondents from the enforcement of an Act of the Congress of the United States commonly known as the Tobacco Inspection Act, Public No. 134-74th Congress, H. R. 8026, and the rules and regulations promulgated thereunder by the Secretary of Agriculture of the United States, until the hearing of this cause; and

WHEREAS, notice of appeal from said restraining order was given in open Court by the respondents, which said appeal has either been abandoned or not perfected; and

WHEREAS, at the request of the respondents the undersigned convened a special term of Court at Elizabeth City, North Carolina, on February 15, 1937, for the purpose of hearing this cause upon its merits; and

WHEREAS, both the complainants and respondents were present at the aforesaid special term, represented by counsel, and offered evidence voluminous in its nature and each filed with the undersigned briefs setting forth (116) their respective contentions; and

WHEREAS, at the conclusion of said hearing the complainants and respondents through their attorneys consented that the undersigned might reserve his opinion and decision of this cause and his judgment until he had had opportunity to examine said evidence and consider said briefs; and

WHEREAS, the undersigned has now carefully considered said evidence and the said briefs of complainants and respondents and has concluded and decided that the aforesaid Tobacco Inspection Act is unconstitutional and that the complainants are entitled to a permanent injunction restraining the enforcement of said Tobacco Inspection Act and the rules and regulations promulgated thereunder by the Secretary of Agriculture upon the warehouse floors of complainants in the Town of Oxford North Carolina:

IT IS, THEREFORE, ADJUDGED AND DECREED

112 HENRY A. WALLACE, SECRETARY, ET AL., APPELLANTS,

that the respondents be and they are hereby permanently restrained and enjoined from enforcing the said Tobacco Inspection Act and the rules and regulations promulgated thereunder by the Secretary of Agriculture of the United States.

This April 21st, 1937.

I. M. MEEKINS,
Judge of the District Court of
the United States for the East-
ern District of North Caro-
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DEFENDANT'S EXHIBIT NO. 1.

(Identified by Mr. Rhodes)

Filed July 1, 1937

OXFORD TOBACCO MARKET SALES 1935 and 1936 CROPS

	Total Producers' Sales		Total all Sales Including Re-Sales		Total Price Paid	
	1935-1936	1936-1937	1935-1936	1936-1937	1935-1936	1936-1937
Mangum's Warehouse:						
September	420,168	355,050	470,570	378,568	88,572	90,262
October	1,179,214	1,192,802	1,411,102	1,328,684	333,323	339,298
November	744,808	860,974	858,118	973,104	204,905	234,206
December	444,414	390,598	520,250	437,040	103,625	94,526
January	449,604	171,876	532,440	194,442	86,756	39,801
Total to Feb. 1	3,238,208	2,971,300	3,792,480	3,311,838	817,181	798,093
						(24.1)
Fleming's Whse:						
September	412,588	583,566	481,072	627,938	87,585	157,147
October	2,048,918	2,010,424	2,257,934	2,234,274	528,077	558,466
November	1,593,630	866,326	1,787,666	982,854	404,385	232,516
December	516,685	238,382	599,802	280,932	107,568	53,729
January	676,038	100,874	788,766	128,786	132,882	24,384
Total Feb. 1	5,247,859	3,799,572	5,915,240	4,254,784	1,260,497	1,026,242
						(24.1)
Farmer's Whse 1 & 2: (#1 & 2 combined No Report for #2)						
September	269,484	166,754	295,248	202,486	54,420	56,081
October	1,114,468	1,043,670	1,341,672	1,155,042	333,696	297,177
November	1,066,766	676,648	1,291,686	748,488	295,015	184,367
December	414,908	224,362	472,148	259,648	90,406	51,382
January	319,796	161,150	334,390	176,138	57,544	36,645
Total to Feb. 1	3,185,422	2,272,584	3,735,144	2,541,802	831,081	625,652
						(24.6)
Johnson's Whse:						
September	330,084	263,662	364,358	305,610	59,929	70,075
October	1,208,576	1,088,282	1,351,394	1,197,666	312,160	303,701
November	754,634	834,158	827,408	950,930	190,838	240,096
December	387,300	371,592	424,542	416,058	80,553	88,643
January	390,139	257,316	438,721	280,844	70,880	57,839
Total to Feb. 1	3,070,733	2,814,940	3,406,423	3,151,108	714,360	760,354
						(24.1)

	Total Producers' Sales		Total all Sales Including Re-Sales		Total Price Paid	
	1935-1936	1936-1937	1935-1936	1936-1937	1935-1936	1936-1937
Banner Whse:						
September	319,564	209,424	360,370	246,230	62,316	60,376
October	866,488	1,252,566	995,738	1,440,002	230,551	359,573
November	856,774	945,448	974,202	1,085,418	233,887	245,115
December	465,848	406,392	530,494	529,706	109,577	86,814
January	481,036	363,430	548,948	407,028	89,973	69,478
Total to Feb. 1	2,989,710	3,177,260	3,409,752	3,558,384	726,304	821,356
						(22.4)
Owen's Whse #1:						
September	498,238	196,972	533,392	213,288	94,982	55,221
October	1,331,768	1,224,344	1,493,702	1,378,76	334,185	343,945
November	902,096	970,274	1,038,256	1,101,472	235,401	269,382
December	458,820	465,040	511,116	516,192	90,809	94,015
January	359,170	315,180	394,726	344,486	60,986	61,640
Total to Feb. 1	3,550,092	3,171,870	3,971,192	3,550,614	816,363	824,203
						(23.5)
Owen's Whse #2:						
September	291,834	438,916	312,238	460,334	49,160	111,945
October	1,325,888	1,446,500	1,448,952	1,542,666	345,998	367,888
November	1,240,686	450,442	1,399,836	481,528	308,993	98,962
December	168,768	222,128	176,720	234,606	30,300	43,408
January	257,364	40,670	270,364	42,482	40,411	6,114
Total to Feb. 1	3,284,540	2,598,656	3,608,110	2,761,616	774,862	628,317
						(22.6)
Red Front Whse:	(no report for 1936)					
September	173,372		187,136		35,134	(No sales
October	423,402		445,820		103,275	1936-37)
November	429,032		475,364		112,309	
December	150,222		165,408		31,240	
January	5,924		5,024		1,370	
Total to Feb. 1	1,181,952		1,279,652		283,328	
Total for Oxford						
Market:						
September	2,715,332	2,214,344	3,004,384	2,434,454	532,098	601,107
October	9,498,722	9,258,518	10,746,314	10,273,510	2,521,265	2,570,048
November	7,588,426	5,604,270	8,652,536	6,323,794	1,985,733	1,504,644
December	3,006,965	2,218,494	3,400,480	2,674,182	644,078	512,517
January	2,939,071	1,410,496	3,314,279	1,574,206	540,802	295,901
Total to Feb. 1	25,748,516	20,806,122	29,117,993	23,280,146	6,223,976	5,484,217
					(21.40)	(23.50)

DEFENDANT'S EXHIBIT NO. 2.

(118) Filed July 1, 1937.

(2 c)

MONK'S

Farmville, N. C.

Tobacco Inspection Certificate

This tobacco inspected by the U. S. Department of Agriculture under the Tobacco Inspection Act, is certified to be:

Type 12

Grade -----

No. -----

By -----

Basket -----

(Date)

(Inspector)

Planter -----

Price \$ -----

Lbs. -----

Buyer -----

DEFENDANT'S EXHIBIT NO. 3.

(119) Filed July 1, 1937.

(Memo. of Clerk: This exhibit is entitled "Circular No. 249 Issued January, 1933—Slightly Revised August, 1933—United States Department of Agriculture—Washington, D. C." In accordance with the stipulation of counsel only the following part of this exhibit is printed:)

(188) **HOW TOBACCO IS SOLD**

The method by which growers dispose of their tobacco vary widely. Briefly summarizing, they include: (1) The auction, or loose-leaf floor system; (2) the hogshhead market; (3) country sales; and (4) cooperative marketing.

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Presses of The Rouse Printery
Farmville, N. C.

THE AUCTION MARKET

The auction, or loose-leaf market, is now the prevailing system of selling tobacco in all tobacco-growing territory from Southern Ohio and Indiana southward, in which are included all States south of the Ohio and Potomac Rivers in which tobacco is grown on a commercial scale (except for the cigar-leaf districts of Florida and Georgia). Reduced to its simplest terms, an auction floor is a place where growers may deliver their tobacco and have it auctioned off to the highest bidder, the bidders being buyers for manufacturerers, dealers, exporters, or speculators. The system is of vast proportions, represents a large total outlay of capital and the employment of large numbers of people, and provides the means of selling more than a billion pounds of tobacco annually during the months from August to April.

The requirements of an auction warehouse are ample floor space on a single floor, and uniformity of lighting. (Fig. 32.) In meeting these primary requirements a type



FIGURE 32—View in a large modern auction warehouse showing large number of skylights.

of architecture has been evolved which is so distinctive that an auction warehouse can be recognized almost as far as it can be seen; the low roof, studded with skylights, characterizes it at once. Within is a spacious floor of planking or concrete, with a driveway down one or possibly both sides, usually 3 or 3-1/2 feet below the floor level, to facilitate unloading. At the front end is the office, and usually about halfway down one side are the scales. There must be a drive on one or both sides where farmers may unload their tobacco and arrange it in neat piles on the trays, or baskets as they are known.

Farmers deliver their tobacco in wagons or trucks and build it up in orderly piles on the baskets. It is trucked first to the scales where a ticket is prepared showing the grower's name, the number of pounds, and the serial number of the lot, and containing spaces for indicating later the name of the buyer, his private grade mark, and the price per pound. The tobacco is next (190) trucked to its place on the warehouse floor where it is arranged in long rows.

The sales are conducted rapidly, taking place as a rule at a rate of about 300 piles per hour. Rates of 350 to 400 piles per hour are not uncommon.

The number of warehouses in a market varies. It is unusual to find a market so small as to have only one; the number on some of the larger markets runs as high as 12 to 15. Lexington, Ky., has 23 warehouses. On the more important markets, also, the warehouses contain more floor space, often with two sets of buyers and auctioneers working simultaneously on the same floor.

The auction scene varies but little, except as relative scarcity or abundance of tobacco makes bidding more or less spirited. There are times when low stocks or a short crop, or a combination of the two, results in keen competition among the buyers for manufacturers, and more active buying, not only on the part of dealers who purchase for domestic and foreign clients, but by speculators who buy and resell.

The sales group consists of an auctioneer, the warehouseman or his representative, the buyers who may number from three or four to a dozen, the clerks who follow and record the sales, and usually a few farmers and hangers-on.

Bids are usually made in quarter-dollar intervals until

their best efforts to obtain an investigation of all the large tobacco companies doing business in this country, that it may be determined as to what extent they have violated the law in making territorial and price agreements, and that if found guilty they may be punished therefor;—* * *.” (Resolution from Guilford County, North Carolina.)

“Whereas, the farmers of Caswell County realize that the 1929 crop of tobacco, a crop equal in quality to that raised in the best of years is now selling on the open market at figures totally out of harmony with its real worth, and in addition below the cost of production.

“And Whereas, under the present conditions surrounding the production of the plant the marketed product cannot be grown at prices now prevailing, without loss to the farmer, and possibly *bankruptcy*, and all of this in the face of the fact that the prices on cigarettes have advanced forty cents per thousand, thereby enhancing to the manufacturers of the leaf an additional profit of fifteen cents per pound, or forty million dollars per year.

“Second: That we urge our Senators and Representatives in Congress to use their good offices with the Government to the end that some Government Committee be named and clothed with authority to investigate to what extent, if any, the tobacco companies are violating the Sherman Anti-Trust Law, also cost of production with the idea in view of translating same into legislation which may meet the imperative demand of the hour.

“And farther that it is the sense of this Mass Meeting of Caswell County farmers that the present system of selling tobacco does not appear to be conducive to the interests of the tobacco growers. We wish to go on record as favoring the plan of Government grading of the leaf.” (Resolution from Caswell County.)

Senator Simmons also transmitted to the Commission, under date of November 13, 1929, several letters received by him from one W. G. Holman, of Greensboro, North Carolina. The Commission had requested Senator (212) Simmons to furnish specific facts in support of

the allegations of price fixing, and the following excerpts with reference thereto are quoted from the letter of Holman referred to:

"With reference to Chairman E. A. McCulloch's request for 'specific information' from 'your correspondents' would say that I fully recognize the difficulty confronting the Federal Trade Commission—in attempting an investigation without specific allegations—other than a general charge on the part of the farmers of collusion on the part of the tobacco companies.

"There is a general belief—on the part of farmers and business men—in all walks of life—that there is collusion on the part of some of the manufacturers—but the only information that we can offer in support of this belief is to point to the unity of action of the manufacturers in putting up the price of cigarettes—the increased demand for cigarettes in this country and abroad—the small stock on hand in China—and Great Britain—the natural promise of increased demand for cigarettes—and the reasonable expectancy of an increased profit to the manufacturers of forty million dollars—because of the increase in the price of cigarettes—and the natural presumption on the part of the business world that these factors would justify an increase in the warehouse price of tobacco.

"Next we observe on some markets—certain companies buying most—and in some cases—well nigh all of the tobacco one day—with no apparent effort on the part of their competitors to buy any—then the next day the companies, which held off the day before seem to have their inning—and take what they wish, with no competition from the companies they seemed to befriend—the day before.

"In other words it appears that A. takes what tobacco he wants—of all grades on Monday—with B. C. & D. holding off—so far as spirited competition is concerned—then B. comes in the next day—for his share—with A. standing outside—next C. comes along the third day—and gets his share—with A. & B. giving him the takings the third day—at his price—and all of them get their share—at unreasonably low prices—quality considered."

"Our only hope is—that an investigation—on the part of the Government—would disclose facts—along those lines—which it will be impossible for the tobacco companies to explain—to the satisfaction of the Government—and that if this situation develops—and no evidence is obtained sufficient to enable the Government to obtain a conviction of any of the manufacturers—then the report of these investigators—coupled with such assistance that Mr. James C. Stone may give at that time—may lead the farmers—one and all—to a conviction that their only salvation is to reduce their acreage in tobacco—work out with the assurance of the Government some plan—(213) which will put them on a parity with the parties who buy from them. * * *

An investigation of conditions in the State of North Carolina was undertaken by the Commission and the first part of this report deals with conditions in that State.

The State of North Carolina is located in what is known as the bright or flue-cured tobacco district and in order that the Commission may have a proper understanding of this industry a short sketch of this territory and the types of tobacco grown therein and the conditions under which tobacco is grown is set out immediately following.

The tobacco plant has been successfully grown in the United States for more than three hundred years, although the tobacco growing areas are relatively small, being located mainly east of the Mississippi river. The various districts produce distinct types of tobacco possessing certain characteristics which make it desirable for special purposes of manufacture or export. These characteristics are determined to a greater or less extent by the particular soil and climatic conditions under which the plant is grown. The industry therefore may be said to be highly specialized.

The term "flue-cured" is derived from the practice of the tobacco growers of curing tobacco under artificial atmospheric conditions by a process of regulating the heat and ventilation without allowing smoke or fumes from the fuel to come in contact with the tobacco. The

barns in which this tobacco is cured are equipped with a system of large pipes which carry off the fuel gases throughout the curing period, the cure being completed within a few days.

It is held that as color is one of the principal factors controlling the value of the leaf cured by this method, the two conditions necessary for success in this respect are the right kind of soil and the proper control of the curing process.

The territory now devoted to bright or flue-cured tobacco covers an area of approximately one million acres and produces about one-half of the tobacco grown in this country. This type of tobacco is grown extensively in the northern and eastern counties of North Carolina, the eastern counties of South Carolina and in southern Virginia, and within recent years has been successfully introduced in south central Georgia and northern Florida. North central North Carolina and southern Virginia, in the Piedmont section, is commonly referred to as the "Old Belt" which comprises the lower tier of counties of south central Virginia, and the two upper tiers of counties in the north central section of North Carolina.

The coastal plains section of the Carolinas and Georgia is known as the "New Belt" and comprises the territory east of Warren, Franklin and Wake counties in North Carolina extending practically to the coast, and includes (214) the greater portion of the section south and southeast of Raleigh. The principal tobacco producing counties of South Carolina are Clarendon, Dillon, Darlington, Florence, Horry, Lee, Marion, Sumter and Williamsburg.

It may be stated that the difference between the types of the "Old Belt" and the "New Belt" is mainly due to the difference in the type of soil upon which each is grown, and as this difference is quite often determinative of the price which the manufacturer feels justified in paying for a particular type, it is believed desirable to include the following statement from a bulletin of the Department of Agriculture relative to soil conditions in this territory.

the price per hundred pounds reaches \$15, although in some districts 10-cent bids are allowed when the price is very low. From \$15 to \$25 bids are in half dollars, and thereafter in dollars. The actual breaking points between the quarter, half, and dollar bids varies in different districts and markets. Each market establishes its own rules as to bids and rate of selling. The existence of rules as to bids promotes rapid sales, since a very slight sign such as a quick glance, a wink, etc., may be interpreted as a bid. The auctioneer accepts such a signal as a bid and runs the price up at once.

In small markets of two or three warehouses only one set of buyers is needed. The same buyers proceed from one floor to the next, and the warehouses rotate from day to day in having the first sale. Usually signs are hung out, "first sale," or "second sale." In larger markets two or more sets of buyers operate simultaneously, and it is not uncommon for two sales to be in progress on the same floor.

The machinery of a tobacco market is well organized for rapid handling of the tobacco and quick payment to the growers. During rush times the wagons or trucks of farmers form long lines of approach to the warehouses, unloading from long before daylight until late at night. In order to accommodate the stream of deliveries, tobacco must be removed from the floor as rapidly as sold to make way for new lots for the following day's business. No sooner is a sale under way, therefore, than hurrying truckers move the tobacco to side doors where it is loaded on trucks for delivery to redriers or to the packhouses of the different companies. Lots which have been bought in by the "house," or the sale of which has been rejected by the grower, are not removed. Such lots are usually dressed up and put back in line for resale. A grower has the right of rejection, which he exercises by turning his ticket—folding it with a crease, tearing (191) off a portion, or otherwise mutilating it.

Bringing up the rear of every sale is a bookman and a clip man. The former draws off the information necessary to the accounting records of the warehouse. The latter, armed with a pad of forms on a clip board, prepares a statement or "farmer's bill" covering the lot or lots sold by each grower. Each computes the total value based on the number of pounds sold, multiplied by the selling

price of the respective lots. Their computations must agree. The clip man then hands the statement to a bill boy by whom it is presented to the office where the warehouse charges are computed and deducted. If desired, the farmer may immediately obtain a check for the net proceeds of the sale.

The warehouseman's business is to provide the facilities by which the producer's commodity may be offered for sale. In doing so he undertakes heavy expenditures in the form of capital investment and salaries. It is true that "the house" frequently bids in a basket of tobacco to avoid having a dissatisfied grower-customer and later sells it for its own account. Aside from such transactions, which are not always conducted at a profit, the warehouseman's revenue is derived from warehouse and selling charges, which vary in different States. In North Carolina, for illustration, the charges are regulated by law and are as follows:

Weighing fee, 10 cents per hundred pounds; auction fee, 15 cents per lot up to 100 pounds, and 25 cents per lot above 100 pounds; commission, 2-1/2 per cent.

Payment to the grower is made by the warehouseman, who issues a check against his own account. Settlements between the warehousemen and the buyers or the companies they represent are usually made daily.

The above represents the usual and proper relationship of the warehouseman to the selling and buying interests which meet on his floor. Occasionally, however, the warehouseman is associated more or less secretly with speculative buyers who seize opportunities to buy in lots at less than their true value, sharing in the profits of later resale. Just how widespread this practice is can not be said, but to the extent that it does exist it is vicious and should be prohibited. The effect is to give the warehouseman an interest in farmers' tobacco being sold at less than its true value, and is in direct violation of the relationship supposed to exist between the farmer and the warehouseman to whom he entrusts his tobacco.

ADVANTAGES AND DISADVANTAGES OF THE AUCTION SYSTEM

Numerous advantages and disadvantages pertain to

the auction warehouse system of marketing, viewed from the standpoint of the tobacco grower. Chief among the advantages are the rapidity with which a crop, large or small, can be disposed of, and the promptness with which the grower can realize on it. Tobacco of almost any condition or quality can be disposed of, and, viewed in the aggregate, prices respond with a considerable degree of nicety to the prevailing conditions of world supply. A study of average prices shows a strong correlation between broad movements of prices and such factors as existing supplies, export demand, manufacturing requirements, and quality, which collectively constitute supply and demand.

The disadvantages of the system relate to those phases of auction selling which subject the individual grower to undue hazards in disposing of his crop. Notwithstanding the stability always inherent in averages and the degree with which average prices respond to the conditions of supply and demand, the very conditions surrounding the sale result in some lots being sold perhaps for more than their worth, and others at much less than their worth. Such instances may be traced to a variety of causes, none fundamental but all contributing to a spirit of unrest and dissatisfaction among growers.

Among the causes that may result in tobacco's being sold below its proper average, or the current average for tobacco of the same grade or quality, may be cited the following:

VARIABLE LIGHT

By large numbers of skylights the effort is made to achieve a uniformly diffused light throughout the warehouse but this result is only partly obtained. Beginning at the center of the floor the lighting effects vary as the side walls are approached and from one side of the warehouse to the other, because of the varying angles at which the light strikes the skylights on opposite slopes of the roof, and the change from forenoon to afternoon sun. A variation in light may occur from one pile to the next, because of nearness of roof supports, skylights, etc. (Fig. 35.) Even more important is the change from a bright to a cloudy day. These variations in light may

be relatively imperceptible, and yet they are seldom without importance in view of the part that fine gradations in color sometimes play in influencing the buyers' judgment. Tobacco that in one light may appear dull and lifeless may present an opposite appearance under more favorable conditions.

WEATHER

Tobacco is remarkably responsive to weather conditions. Exposed to dry atmosphere it quickly becomes so brittle as to break up with handling. With a change to humid weather the leaf becomes soft, pliable, and elastic. If the weather turns cold, the tobacco that was soft and pliable quickly becomes hard and rustles to the touch unless it is in very high order. Buyers are accustomed to these changes in weather and are trained to allow for the resulting changes in the physical condition of the tobacco, yet errors in judgment are unavoidable. The changes in physical condition effect changes in the appearance of the tobacco with respect to such factors as color, luster, and "life," and errors in appraisal may therefore arise with reference to the texture or other characteristics appraised by the sense of touch, as well as those appraised by the eye.

RAPIDITY OF SALES

Rapidity of sales causes several kinds of error. When from 300 to 400 or more lots are sold in an hour the number of seconds devoted to a given lot is small, and the conditions are such that not all buyers have ready access to the tobacco. Buyers usually pull several hands of tobacco from the lot at a time, hold it in different angles to the light, smell it for mould, test it by touch for body or thickness, gum, and stretch. Necessarily some buyers have better access to the lot than others. Not all buyers are on the lookout for the same grades of tobacco. The lot being sold may be of excellent quality for certain purposes but not of the character desired by the buyers closest to it though very much desired by other buyers down the line. If, by reason of his inability to make a close examination of the tobacco being sold, such a buyer fails to recognize its true character and value, then no criticism attaches to him if his bid is needlessly

low, but a severe loss may have been inflicted upon the grower.

Similar results may come from trivial things. Men in the tobacco trade have remarked that a water boy may cause one or two important buyers to turn from the sale momentarily, and in that short interval some farmer's tobacco may be knocked down for much less than its real value.

In justice to the buyers it should be said that these variations in price are as a rule inadvertent. Many times when their attention is called, after the sale, to what was manifestly an error in buying, resulting in an unduly low price, they voluntarily raise the price.

That such errors occur and are fairly numerous is evidenced on every market by the number of growers who reject a sale, put the tobacco back in line, and resell at a higher price. Instances of the same tobacco sold at two, three, or even four times its first price are common and are striking evidence that undue hazards beset the tobacco grower in marketing his crop.

On the other hand it must be said that frequently farmers reject sales in the mistaken belief that the price is below the market for the grade involved. Often the resale price is lower than that offered on the first sale. It is generally true that when the prevailing market average is reasonably satisfactory to growers—high enough, that is, to encourage equal or increased acreage the following season—growers will accept without complaint an offer on a particular lot that is in line or is believed to be in line with the average price paid for other tobacco of the same grade. For example, assuming a general average for all grades of type 11, old-belt flue-cured tobacco, of 18 cents per pound, a farmer may deliver some tobacco of low grade that sells for only 10 cents per pound. If he feels that 10 cents is about the average price paid for other tobacco of the same grade, he is much less likely to complain than if he feels that his tobacco is better than the general run of 10-cent tobacco. But growers have not until recently had the opportunity to obtain an authentic, unbiased determination of grade, or specific information as to ruling prices for the various grades. This consideration, together with the hazards of tobacco marketing already alluded to, has led to the development of a new phase in auction warehouse marketing, namely, a governmental tobacco grading service. (P. 86.)

Among the disadvantages of the auction system of marketing are the heavy buying expenses entailed. The larger manufacturers, in particular, must maintain extensive corps of buyers and other employees in the field during the marketing season. There are approximately 115 auction markets for flue-cured tobacco alone. Those in the extreme southern end of the belt open first and have closed by the time markets open in the northern end of the belt. Nevertheless, during the major portion of the marketing season from 60 to 80 markets are in operation simultaneously in the flue-cured districts alone, with from 1 to 5 or 6 sets of buyers on each. As a rule the larger buying interests are represented on each market by as many buyers as there are sales. On each market, also, they have a bookkeeper and a stockman to handle the accounts and take charge of the tobacco. Each company has its circuit riders, scattered throughout the territory, who supervise the buyers. These items of expense together with the capital and operating costs (194) of a multitude of auction warehouses undoubted-

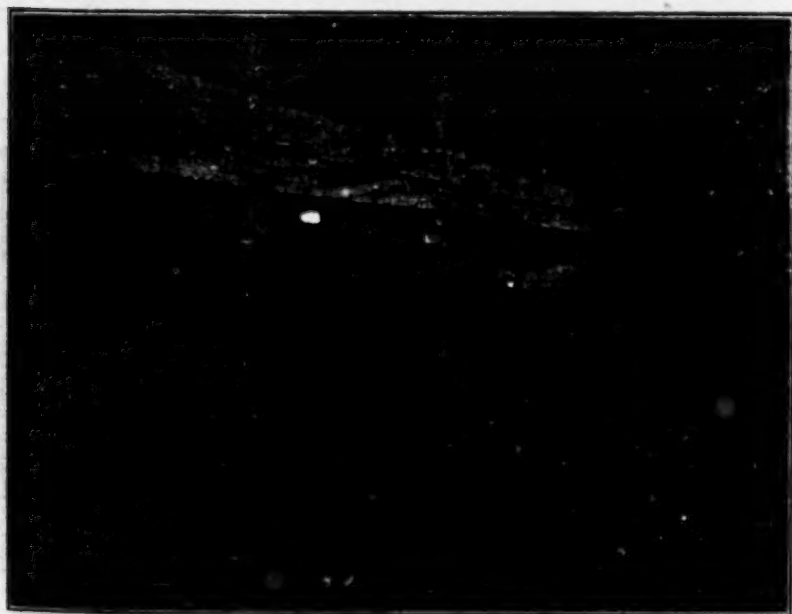


FIGURE 33—Method by which samples of tobacco are withdrawn after removing the cask from a hogshead of tobacco. This photograph was made in Louisville, Ky., a number of years ago when that city was an important hogshead market. A similar method of sampling prevails in Baltimore.

ly comprise an impressive total overhead expense in the marketing of tobacco.

Statistics for an accurate analysis of buying costs under the auction marketing system are not available, but the conclusion seems justified that the costs are relatively high. The large number of small markets, which during much of the season operate for only a portion of the day, gives weight to this conclusion. Under such conditions the salaries and expenses of buyers represent a mounting bill of expense that may be disproportionate to the volume of tobacco purchased.

This leads to the consideration of another aspect of the auction market. To reduce buying expenses it is a common practice for companies to place buying orders. This is more especially true on the smaller markets. Thus a company, instead of incurring the expense of maintaining its own buyer on a certain market, places a buying order with a leaf dealer who has a buyer at that market. This buyer bids not only on behalf of his own employer but for possibly half a dozen other companies.

Were it not for multiple buying orders, it is probable that many of the smaller markets would cease to operate and the existing trend toward elimination of small markets would become more pronounced. Viewed alone, however, multiple buying may become an abuse which is hurtful to the interests of the growers by reason of the fact that competition in buying is diminished.

DEFENDANT'S EXHIBIT NO. 4.

(208)

Filed July 1, 1937

REPORT ON MARKETING OF LEAF TOBACCO IN THE FLUE-CURED DISTRICTS OF THE STATES OF NORTH CAROLINA AND GEORGIA

May 14, 1931.

To the Federal Trade Commission,
Washington, D. C.

Gentlemen:

There is being transmitted to you herewith a report

on the Marketing of Leaf Tobacco in the flue-cured districts of North Carolina and Georgia. This report was prepared by Mr. James A. Horton of the Legal Investigating Division and includes the results of an inquiry made in 1930.

Respectfully submitted,

HERBERT L. ANDERSON,
Chief Examiner.

HLA/L

Released May 23, 1931.

REPORT ON MARKETING OF LEAF TOBACCO IN
THE FLUE-CURED DISTRICTS OF THE
STATES OF NORTH CAROLINA
(209) AND GEORGIA

This matter was originally brought to the attention of the Commission by Congressman John H. Kerr, of North Carolina, who, under date of October 1, 1929, addressed a letter to Commissioner Ferguson, reading as follows:

"The prices paid for tobacco on our markets is distressingly below cost of production. In addition, there seems to be a concert of action among all the buyers to purchase at a predetermined price: there seems to be no competition. I feel that there should be some investigation by the Commission of which you are an honored member, to find out the TRUTH, and suggest a remedy—if that is within your province.

"All over our part of the State our tobacco is being purchased at a price lower than last year, and below the cost of living, and our business men and farmers are blue. Yet the manufactured article is in demand and at a price which enables the manufacturers to roll in dividends. Consumption has increased ten fold, nearly.

"I will be pleased to hear from you as I know you will be glad to do all that can be done under your oath of office to aid our people."

Senator F. M. Simmons, of North Carolina, under date of October 9, 1929, addressed a letter to the Chairman of the Commission with which he submitted copies of certain resolutions adopted by certain tobacco farmers in the counties of Guilford, Rockingham, Caswell and Stokes, in the State of North Carolina. This letter reads as follows:

"Senator Overman and myself, with the approval of those members of the House Delegation from North Carolina from whom we have heard, deem it our duty to submit to you, for such attention and investigation as you may consider appropriate, copies of certain resolutions adopted by tobacco farmers in the counties of Guilford, Rockingham, Caswell and Stokes, in North Carolina.

"The copies are hereto attached.

"Assuring you that we shall appreciate your prompt attention to this matter, and with high esteem, I am,
• • •"

There are quoted below excerpts from some of the resolutions referred to in the letter of Senator Simmons:

"Whereas: The present prices which are being paid (210) for tobacco not only in this section, but in the State, are lower than the prices paid for a more inferior crop last year, and in this section are lower than the prices paid for tobacco at the opening of the season,

"The cost of growing tobacco, under present labor conditions, is not less than twenty cents per pound, and the average price paid for tobacco in the State up to this time, is less than fifteen cents per pound,

"The large tobacco manufacturers have recently raised the price of cigarettes forty cents per thousand, which means an extra profit to them of about fifteen cents per pound, or forty million dollars per year, and

"Whereas: The farmers believe that both territorial and price agreements have been entered into by these large tobacco companies to the detriment of the interests of the farmer, and in flagrant violation of our laws, and

the Sherman Anti-Trust Law was enacted for the distinct purpose of restraining the selfish tendencies of large corporations for the benefit of society.

"Therefore, be it resolved: That this Mass Meeting of farmers here assembled do respectfully request our Senators and Representatives in Congress to call upon Congress to institute at once an investigation into the activities of all the large tobacco companies doing business in this country, with a view to determining to what extent they have entered into territorial and price agreements, that they may be punished for such violation;

"That we urge our Senators and Representatives in Congress to ask of the Government that a committee be appointed at once to inquire into the cost of production of tobacco per pound, and to use every effort to have a law enacted to protect the interests of the farmer in the future against the heartless exactions of corporate wealth." (Resolutions from Stokes County, North Carolina.)

"The large tobacco manufacturers have recently raised the price of cigarettes forty cents per thousand, which means an extra profit to them of about fifteen cents per pound, or forty million dollars per year, without passing even a small part of this extra profit on to the farmers,

"WHEREAS, the attitude of the large tobacco companies in buying in certain sections of the State, and failing to buy in other sections coupled with the unusually low prices paid for the crop in this section, which is the best crop of tobacco grown since 1922, and the well nigh unity of action of all the large tobacco companies (211) in raising the price of cigarettes to the same figure, has given the farmers reason for believing that both territorial and price agreements have been entered into by these companies in violation of the Sherman Anti-Trust Law.

"Therefore, be it resolved by the Tobacco Growers of Guilford County here assembled, that we heartily endorse the action of the farmers of Stokes County for the reasons above stated, and do unite with them in requesting our Senator and Congressmen collectively to use

"Speaking broadly, the current trade differentiations of the flue-cured producing area into the Old Belt and the New Belt sections indicate also a fairly well-defined modification in the character of the tobacco produced in these two sections. The best tobacco soils of both the Old Belt and the New Belt are all light and sandy, but those of the New Belt, in the Coastal Plain, are lighter and more sandy as a class than are those of the Old Belt in the Piedmont section, and these soils and especially the subsoils, become progressively more clayey as one progresses westward toward the mountains. The lighter coastal plain soils characteristically produce a brighter and paler type of leaf than the Old Belt soils, but with less body and richness. In the western part of the Old Belt, particularly from about Rockingham County, N. C., and Henry County, Va., the rich waxy filler types predominate, while the colors run in much longer proportion to mahogany or red. Soil adaptation is a very important factor in the production of a satisfactory quality of flue-cured tobacco. It is an influence of fundamental importance in determining the color of the leaf produced, as well as such other points of quality as fineness, richness, and body. In general, the soils adapted to the production of flue-cured tobacco may be described as light and sandy to a depth of 6 to 10 inches, underlain with a sandy-clay subsoil of a yellowish orange color.

"The whiter soils produce the brightest tobacco, unless offset by some other factor. The clay of the subsoil is an important factor in giving the leaf richness and body, and it is also an aid in retaining fertility. In the Coastal Plain Section some of the soils are such loose, deep sands as to constitute an extreme of the bright-tobacco type. Such soils will naturally produce a very bright tobacco, but the leaf is likely to be lacking in body and richness, and the soil itself is at a disadvantage in retaining fertility and is not likely to withstand wet weather well. On the other hand, the soils of the Old Belt section, more especially in the western part, frequently represent the other extreme of being too clayey and too red to produce anything more than a dark tobacco, although, generally, the leaf will be rich and waxy. Between these soil extremes of the New Belt Coastal (215) Plain section, some of them tending to be too

extremely sandy and open, and the clayey soils of the western part of the Old Belt section, there is to be found almost every conceivable variation in shade, depth, and mechanical structure."

It is necessary, owing to the fact that this type of tobacco is grown on rather weak, light types of sandy soil, that liberal quantities of fertilizing materials be applied in order to obtain the desired quality, which adds materially to the cost of production. The grower, therefore, to secure the largest returns on his crop, must produce tobacco which is high in quality and shows a large yield per acre, this being secured largely by the proper application of fertilizing materials.

During the last twenty-five years the demand for flue-cured tobacco has constantly increased, this type being particularly in demand for the manufacture of cigarettes, as well as for export, which fact has resulted in stimulating production. It has been said that: "All things considered, this flue-cured type of tobacco is unsurpassed in universal popularity and general adaptability to a variety of uses, including granulated and cut smoking tobacco, both paper and all-tobacco cigarettes, and plug filler and wrapper; in fact, it is adapted to all the regular forms in which tobacco is used except standard cigars and snuff. In color and general appearance it is very attractive, while its low nicotine content, mildness, aromatic sweetness, fragrance, and good keeping qualities render it very satisfying to the user."

This type of tobacco is highly in favor in the export trade and it is estimated that approximately forty per cent of the flue-cured tobacco grown is exported, the remainder being used for domestic consumption.

The Department of Agriculture, for the purpose of classification under the Tobacco Stocks and Standards Act, has divided leaf tobacco into 9 classes. Class 1 includes the flue-cured types, which are known as types 11, 12, 13 and 14. The territory in which each of these types is grown is set out immediately below, and reference is also had to the map accompanying this report in which the territory in which each of these types is grown is charted.

Type 11.—That type of flue-cured tobacco commonly known as old belt flue-cured, western district bright, middle belt flue-cured, or semiold belt flue-cured; and produced principally in the piedmont sections of Virginia and North Carolina.

Type 12.—That type of flue-cured tobacco commonly known as eastern flue-cured, new belt of North Carolina flue-cured, eastern district bright, or eastern Carolina bright; and produced principally in the coastal plains section of North Carolina, north of the South River.

Type 13.—That type of flue-cured tobacco commonly (216) known as southeastern flue-cured, southeastern bright, South Carolina flue-cured, or new belt of South Carolina and southeastern North Carolina; and produced principally in the coastal plains section of South Carolina and the southeastern counties of North Carolina south of the South river.

Type 14.—That type of flue-cured tobacco commonly known as southern flue-cured, southern bright, southern district bright, new belt of Georgia and Florida, Florida bright, Alabama bright, or Georgia flue-cured; and produced principally in the southern sections of Georgia and to some extent in Florida, Alabama and Mississippi.

Groups applicable to types 11, 12, 13 and 14:

- A. Wrappers.
- B. Heavy Leaf, cutting leaf, and fillers.
- C. Thin leaf or cutters.
- X. Lugs and ground leaves.
- S. Scrap, as defined.
- N. Nondescript, as defined.

PRODUCTION

The acreage of tobacco in the United States of all types for the year 1928 totalled 1,894,100, which was increased by 122,300 acres in 1929, or 2,016,400 acres. The average yield per acre in 1928 was 649.7 pounds and in 1929, 672.5 pounds. Production in 1928 amounted to 1,374,547,000 pounds, and in 1929 to 1,500,891,000 pounds, or an increase of 126,344,000 pounds. The average price

in 1928 was 20.2 cents per pound and in 1929, the average price was 18.6 cents per pound.

The table set out below shows production, stocks, supply, disappearance and price of flue-cured tobacco, types 11 to 14, for the years 1913 to 1929, inclusive.

(217)

	Production*	Stocks on hand July 1	Total supply	Dis- appear- ance, year be- ginning July 1	Aver- age price per pound
	Million pounds	Million pounds	Million pounds	Million pounds	Cents
1913	282.8	**211.0	493.8	262.3	18.3
1914	275.4	**231.5	506.9	238.3	11.3
1915	312.0	**268.6	580.6	301.2	10.5
1916	263.3	**279.4	542.7	289.3	19.0
1917	358.0	253.4	612.2	319.8	30.5
1918	487.1	292.4	779.5	452.2	34.3
1919	487.5	327.3	814.8	510.6	44.6
1920	630.8	304.2	935.0	451.9	21.1
1921	371.4	483.1	854.5	413.0	21.7
1922	408.8	440.7	849.5	410.8	29.0
1923	592.9	438.7	1031.6	555.0	22.3
1924	436.8	476.6	913.4	451.1	22.5
1925	576.3	462.3	1038.6	583.2	20.0
1926	564.5	455.4	1019.9	553.4	25.6
1927	715.9	466.5	1182.4	617.4	21.3
1928	740.8	565.0	1305.8	715.8	17.7
1929	750.7	590.0	1340.7	741.4	18.1

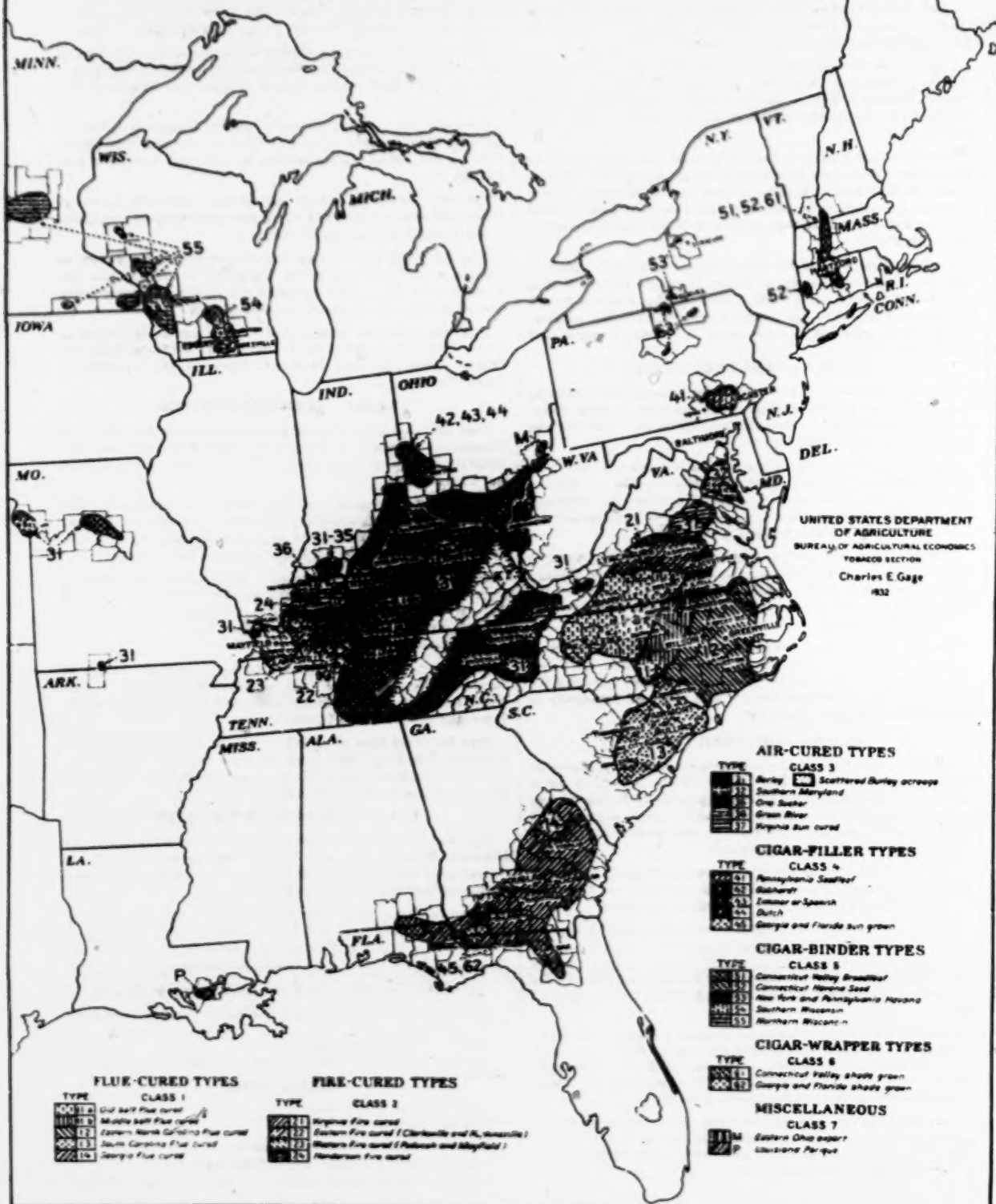
* Green Weight basis, i. e., farmers' sales weight. Disappearance includes consumption, exports, and losses.

** Estimated.

The acreage, yield, production and price of flue-cured tobacco in the various States of the flue-cured district (218) is shown in the accompanying table furnished by the Bureau of Agricultural Economics of the Department of Agriculture:

Class and type name	Type	Acreage			Yield per acre		Production		Price per lb.	
	No.	1928	1929	1930	1928	1929	1928	1929	1928	1929
		Acres	Acres	Acres	Pounds	Pounds	1000 lbs.	1000 lbs.	Cents	Cents
Old Belt	11	430,300	436,300	443,000	613	657	263,822	286,425	18.3	17.8
Virginia	11	133,300	126,000	131,000	531	635	73,438	79,965	17.1	17.4
North Carolina	11	292,000	310,000	312,000	652	666	190,384	206,460	18.7	18.0
Eastern North Car. Belt	12	378,000	394,800	407,000	707	629	267,424	248,220	20.6	19.1
South Carolina Belt	13	203,000	187,200	194,800	600	650	121,888	121,745	13.6	16.4
North Carolina	13	55,000	54,200	61,800	720	715	39,600	38,753	15.4	17.3
South Carolina	13	148,000	133,000	133,000	556	624	82,288	82,992	12.7	16.0
Georgia-Florida Belt	14	128,900	116,700	128,200	680	808	87,673	94,339	12.7	18.4
Georgia	14	121,000	108,600	119,600	685	812	82,867	88,184	12.8	18.4
Florida	14	7,900	8,100	8,600	608	760	4,806	6,155	12.0	18.1

TOBACCO-GROWING DISTRICTS



UNITED STATES DEPARTMENT
 OF AGRICULTURE
 BUREAU OF AGRICULTURAL ECONOMICS
 TOBACCO SECTION
 Charles E. Gage
 1932

BRIEF OF CLASSIFICATION OF LEAF TOBACCO

(Covering classes and types of tobacco)

CLASS 1—FLUE-CURED TYPES

Type 11: That type of flue-cured tobacco commonly known as Old Belt Flue-cured, Western District Bright or Flue-cured, Bright Virginia Leaf, Western North Carolina Bright, Middle Belt Flue-cured, or Semi-old Belt Flue-cured; and produced principally in the Piedmont sections of Virginia and North Carolina.

Type 12: That type of flue-cured tobacco commonly known as Eastern Flue-cured, New Belt of North Carolina Flue-cured, Eastern District Bright, or Eastern Carolina Bright; and produced principally in the coastal section of North Carolina, north of the South River.

Type 13: That type of flue-cured tobacco commonly known as Southeastern Flue-cured, Southeastern Bright, South Carolina Flue-cured, or New Belt of South Carolina and Southeastern North Carolina; and produced principally in the coastal sections of South Carolina and the southeastern counties of North Carolina, south of the South River.

Type 14: That type of flue-cured tobacco commonly known as Southern Flue-cured, Southern Bright, Southern District Bright, New Belt of Georgia and Florida, Florida Bright, Alabama Bright, or Georgia Flue-cured; and produced principally in the southern sections of Georgia and to some extent in Florida, Alabama, and Mississippi.

CLASS 2—FIRE-CURED TYPES

Type 21: That type of fire-cured tobacco commonly known as Eastern Fire-cured, Virginia Fire-cured, Smoked, or Dark Fired, or Dark Virginia; and produced principally in the Piedmont and mountain sections of Virginia.

Type 22: That type of fire-cured tobacco commonly known as Eastern District Fire-cured, Clarksville, Hopkinsville, and Springfield Fire-cured or Dark-fired, or Kentucky-Tennessee Broadleaf; and produced principally in a section east of the Tennessee River, in southern Kentucky and northern Tennessee.

Type 23: That type of fire-cured tobacco commonly known as Western Fire-cured, Mayfield and Paducah Dark-fired, or Western District Dark; and produced principally in a section between the Tennessee, Ohio, and Mississippi Rivers in western Kentucky and northwestern Tennessee.

Type 24: That type of fire-cured tobacco commonly known as Northern Fire-cured, Henderson Dark-fired or Smoked, the Stemming District, or Madisonville Dark or Dark-fired, including the fire-cured of the Owensboro district; and produced principally in the Henderson district of Kentucky.

CLASS 3—AIR-CURED TYPES

Type 31: That type of air-cured tobacco commonly known as Burley, Burley Air-cured, Red Burley, White Burley, or Light Air-cured of Kentucky; and produced principally in central and northeastern Kentucky, southern Ohio and Indiana, western West Virginia, central and eastern Tennessee, and sections of Virginia, North Carolina, Missouri, and Arkansas.

Type 32: That type of air-cured tobacco commonly known as Southern Maryland tobacco, Maryland Air-cured, or Maryland Export; and produced principally in southern Maryland.

Type 35: That type of air-cured tobacco commonly known as One-sucker, One-sucker Air-cured, Kentucky-Tennessee One-sucker, Indiana One-sucker, or Dark Air-cured One-sucker, including the Upper Cumberland District One-sucker; and produced principally in northern Tennessee, south central Kentucky, and southern Indiana.

Type 36: That type of air-cured tobacco commonly known as Green River, Green River Air-cured, Henderson District Air-cured, Dark Air-cured of Owensboro, or Owensboro District Air-cured; and produced principally in the Green River Section of Kentucky, in both the Owensboro and Henderson districts.

Type 37: That type of air-cured or sun-cured tobacco commonly known as Virginia Sun-cured, Virginia Sun and Air-cured, or Dark Virginia Air-cured; and produced principally in the central section of Virginia, north of the James River.

CLASS 4—CIGAR FILLER TYPES

Type 41: That type of cigar-leaf tobacco commonly known as Pennsylvania Seedleaf, Pennsylvania Broadleaf, Pennsylvania Filler Type, or Lancaster and York County Filler Type; and produced principally in Lancaster County, Pa., and the adjoining counties.

Type 42: That type of cigar-leaf tobacco commonly known as Gebhardt, Ohio Seedleaf, or Ohio Broadleaf; and produced principally in the Miami Valley section of Ohio and extending into Indiana.

Type 43: That type of cigar-leaf tobacco commonly known as Zimmer, Ohio Zimmer, or Zimmer Spanish; and produced principally in the Miami Valley section of Ohio and extending into Indiana.

Type 44: That type of cigar-leaf tobacco commonly known as Dutch, Shoestring Dutch, or Little Dutch; and produced principally in the Miami Valley section of Ohio.

Type 45: That type of cigar-leaf tobacco commonly known as Georgia and Florida Sun-grown Cigar-leaf, or the Georgia and Florida Filler Type; and produced principally in southwestern Georgia and the central part of northern Florida.

Type 46: That type of cigar-leaf tobacco commonly known as Puerto Rican Sun-grown or the Puerto Rican Filler Type, including Primed (Deshojado) and Stalk-out (Manojo); and produced in Puerto Rico.

CLASS 5—CIGAR BINDER TYPES

Type 51: That type of cigar-leaf tobacco commonly known as Connecticut Broadleaf or Connecticut Valley Broadleaf; and produced principally in the Connecticut Valley sections of Connecticut and Massachusetts.

Type 52: That type of cigar-leaf tobacco commonly known as Connecticut Valley Havana Seed, Connecticut Havana Seed, Primed Havana, or Stalk-out Havana; and produced principally in the Connecticut Valley sections of Connecticut and Massachusetts.

Type 53: That type of cigar-leaf tobacco commonly known as York State Tobacco, Havana Seed of New York, or the Blader Type of New York and Pennsylvania; and produced principally in the Big Flats and Onondaga sections of New York State, and extending into Pennsylvania.

Type 54: That type of cigar-leaf tobacco commonly known as Southern Wisconsin Cigar Leaf or Southern Wisconsin Binder Type; and produced principally south and east of the Wisconsin River, and extending into Illinois.

Type 55: That type of cigar-leaf tobacco commonly known as Northern Wisconsin Cigar Leaf, or Northern Wisconsin Binder Type; and produced principally north and west of the Wisconsin River and to some extent in Minnesota.

CLASS 6—CIGAR WRAPPER TYPES

Type 61: That type of cigar-leaf tobacco commonly known as Northern Shade, Connecticut Valley Shade-grown, or Shade of Connecticut; and produced principally in the Connecticut Valley sections of Connecticut and Massachusetts.

Type 62: That type of cigar-leaf tobacco commonly known as Southern Shade, Georgia and Florida Shade-grown, or Shade of Georgia and Florida; and produced principally in southwestern Georgia and in the central part of northern Florida.

MISCELLANEOUS TYPES OF DOMESTIC TOBACCO

Type 71: Ohio-Flue-cured and Fire-cured, (known as Eastern Ohio.)

Type 72: Louisiana Perique.

Type 73: All other domestic types of tobacco not otherwise classified.

FOREIGN TYPES

Type 81: Cuba. (Havana.)

Type 82: Sumatra and Java.

Type 83: Philippine Islands. (Manila.)

Type 84: Other Foreign-grown Cigar-Leaf.

Type 90: Foreign-grown cigarette tobacco. (Turkish and other.)

This tables discloses that the acreage in this district (220) was decreased in 1929 by 5,200 acres, although production was increased by 9,922,000 pounds. The average price for the entire district in 1928 was 17.7 cents per pound, and in 1929 was 18.1 cents per pound.

The preliminary acreage report for this district for the year 1930 shows an increase of 38,000 acres over that of 1929.

In the Old Belt there was an increase of 6,000 acres in 1929, and the preliminary acreage report for 1930 shows an increase of 6,700 acres. In the State of North Carolina in the Old Belt the table discloses there was an increase of 18,000 acres in 1929 over that of 1928, while the preliminary acreage report for 1930 shows an increase of 2,000 acres for the current season, over 1929.

Production in the Old Belt showed an increase in 1929 over 1928 of 22,603,000 pounds, the State of North Carolina showing an increase alone of 16,076,000 pounds.

The average price in the Old Belt for the year 1928 was 18.3 and in 1929 the average price was 17.8 cents per pound. The average price in the North Carolina portion of the Old Belt was 18.7 cents per pound in 1928, and 18 cents per pound in 1929.

The acreage in the Eastern North Carolina Belt (Type 12) showed an increase of 16,000 acres in 1929 over that of 1928, and the preliminary acreage report of 1930 discloses a further increase of 12,200 acres. The production in 1929 showed a decrease of 19,204,000 pounds.

The South Carolina Belt (Type 13) in 1929 showed a decrease of 15,800 acres, but the yield was 50 pounds greater per acre, the production figures showing a loss in 1929 of 143,000 pounds.

The preliminary acreage report for 1930 discloses a gain of 7,600 acres over 1929 which, however, is 8,200 acres less than that planted in 1928.

The Georgia-Florida Belt (Type 14) will be discussed in another part of this report.

METHOD OF MARKETING

It is estimated that over 85 per cent of the tobacco used annually in the manufacture of cigarettes, chewing and smoking tobacco is sold directly by the farmer to the manufacturer at auction warehouses. This method has been in use for many years, practically without change, and has been the cause of much dissatisfaction and complaint on the part of tobacco growers. Auction warehouses are located at strategic points in the tobacco producing areas and in the State of North Carolina there are 154 such warehouses. The farmer hauls his tobacco to a warehouse of his own selection where it is weighed (221) and placed in large splintwood baskets and placed on the warehouse floor. The baskets are arranged in long rows, extending the length of the warehouse.

Each of the large tobacco manufacturers has a buyer on each market and in some instances where the market is large may have several sets of buyers who receive from the manufacturer represented instructions as to the grades to buy and the average price to pay. Each manufacturer has his own system of grading tobacco and uses his own private grade marks. The grading system of each manufacturer is adapted to his own particular requirements, and as these grades are supposedly secret the tobacco farmer is placed at a great disadvantage, as it is impossible for him to learn the various systems or the distinction between the grades. The buyers representing the various companies are experts and buy tobacco on the basis of their private judgment of grade obtained after a very brief inspection of each basket of tobacco on the warehouse floor. It is not unusual to have from fifteen to twenty buyers on the floor, ranging from the buyer for the large manufacturer to the small independent buyer, and also the speculative buyer representing no principal but who buys really for the purpose of reselling.

When the market opens the auctioneer and the clerks who handle the computing and recording work, together with the buyers, proceed up and down the aisles of tobacco, each basket of tobacco being auctioned off to the highest bidder. These transactions are conducted at the rate of from two hundred piles to as high as three hun-

dred and fifty to four hundred piles per hour, the average usually being about three hundred per hour. The buyer, therefore, is required to inspect, grade and buy tobacco at the rate of one transaction approximately every ten seconds, and as there may be ten to twenty buyers in the line it is manifestly impossible for each of the buyers to inspect a pile of tobacco, and very often the competitive feature associated with a system of selling such as this is lacking. The result is a lack of stability in prices, there being a wide range in prices for different piles of tobacco of apparently similar quality, and in the sections visited practically every farmer who was interviewed expressed great dissatisfaction and violent opposition to the present system of marketing.

The tobacco farmer of North Carolina is fairly well versed in the art of grading or sorting tobacco and places it on the market tied in what is termed "hands", and tobacco that is properly graded and sorted as to color, length, etc., usually commands a far better price than that improperly graded and sorted. The tobacco buyer is particularly interested in uniformity of quality and bases his judgment to a large extent on the uniform length, quality and color of tobacco. Where the farmer has not sorted his tobacco carefully there is usually a mixture of grades which results in bringing high priced and low priced tobacco together in a pile and the price paid for the pile of tobacco will often be based on the lower grades contained in the pile, with the result that the better grades are sold at a loss.

It is also necessary for the manufacturer to reassort (222) the tobacco purchased from the farmer for quality, color, length, etc., to meet his particular requirements, and this cost of rehandling is taken into consideration and influences the price to some extent. The practice of "nesting" or placing inferior or low grade tobacco in the interior of the pile, concealed by better grades, occasionally arises and must be guarded against.

Another factor which at times influences the price paid is that of light conditions within the warehouse. Color is quite often a determining factor in judging the quality of tobacco and the manner in which the light falls on the pile of tobacco influences to a large extent the price paid.

These various factors are summarized in an article by Charles E. Gage, Senior Crop and Livestock Estimator of the Bureau of Agricultural Economics of the Department of Agriculture as follows:

"These, then, are three important factors: (1) Expense of rehandling poorly sorted tobacco, (2) uncertainty as to the proportion in which different grades are present in a mixed pile, and (3) varying light conditions.

"The influence of the third factor is rather uncertain. It may cause one pile to sell higher than a near-by pile of better tobacco, or lower than an adjacent pile of poorer tobacco; it may cause tobacco to sell higher or lower than its real value. The net effect of all three factors is to broaden unduly the range of prices, to introduce a lack of stability in prices paid for tobacco comparable in quality, and to create strong dissatisfaction among growers. This dissatisfaction is difficult to deal with, especially in the absence of any universal language for, or authoritative determination of, quality by which the warehouseman can reply to farmers' complaints."

The buying season opens in North Carolina about the first of October and continues for a period of from four to five months, the warehouses operating on a five day per week schedule.

The warehouse sales report, by belts, for the State of North Carolina for the year 1929, with the average price received at each market, is set out below.

Producers' sales, or first hand sales, refer to the quantity of tobacco sold by the farmer directly to the manufacturer. Dealers' resales constitute tobacco resold for speculative buyers and may also include the tobacco purchased by the warehouse and resold by it.

STATE-FEDERAL DEPARTMENTS OF AGRICULTURE: CROP REPORTING SERVICE, RALEIGH, N. C.

NORTH CAROLINA TOBACCO WAREHOUSE SALES REPORT, BY BELTS, SEASON 1929-1930

(223) Markets	Number Houses	Producers' Sales	Dealers' Resales	Total Sales	Average Price '29-30	'28-29	Season's Producers' Sales '28-29
(Old Bright Belt—Flue-cured type No. 11)							
Burlington	3	2,206,159	82,340	2,451,099	\$16.45	\$16.58	2,117,189
Mebane	3	4,139,326	71,630	4,576,828	21.65	22.08	3,922,276
Durham	7	21,375,178	1,562,526	25,067,858	19.65	20.06	22,279,428
Winston-Salem	2	53,934,876	3,732,064	60,842,530	17.10	16.93	48,349,119
Louisburg	3	2,206,969	83,168	2,467,975	15.18	17.31	2,786,611
Oxford	6	20,821,103	702,290	23,038,461	19.74	18.17	16,969,629
Sanford	2	2,535,430	98,594	2,864,860	17.55	16.72	1,716,282
Aberdeen	2	3,363,542	147,482	3,808,536	16.30	18.91	3,995,019
Carthage	2	2,273,846	—	2,296,376	17.69	20.06	2,182,712
Roxboro	4	6,136,284	423,292	6,828,432	20.94	18.55	4,621,484
Madison	2	2,267,896	16,078	2,577,644	14.20	14.62	1,281,409
Reidsville	4	9,577,683	563,506	10,465,279	15.81	17.28	7,110,965
Stoneville	4	2,766,734	30,392	3,292,248	15.60	15.29	2,135,842
Elkin		Not operating this season					760,202
Mt. Airy	3	5,064,675	386,318	5,883,493	14.88	14.02	4,453,684
Henderson	5	21,922,696	338,576	23,316,726	19.40	19.56	20,232,962
Fuquay Springs	4	5,517,389	456,737	6,331,522	20.27	21.23	6,008,401
Wendell	3	4,456,448	248,518	5,053,956	17.97	17.27	3,080,830
Zebulon	2	2,092,146	69,340	2,374,732	15.29	17.07	2,903,656
Warrenton	2	3,066,486	16,398	3,160,292	16.06	17.58	2,849,880
Totals	68	175,724,596	9,029,249	196,698,847	18.10	18.15	159,777,577

STATE-FEDERAL DEPARTMENTS OF AGRICULTURE: CROP REPORTING SERVICE, RALEIGH, N. C.

NORTH CAROLINA TOBACCO WAREHOUSE SALES REPORT, BY BELTS, SEASON 1929-1930

(224) Markets	Number Houses	Producers' Sales	Dealers' Resales	Total Sales	Average Price '29-30	Season's Producers' Sales '28-29
(New Bright Belt—flue-cured type No. 11)						
Washington	3	3,222,593	54,006	3,566,493	16.70	5,862,690
Windsor	2	1,341,972	170,886	1,685,796	14.91	1,588,048
New Bern	2	1,950,869	33,020	2,175,657	15.07	3,207,762
Wallace	2	2,141,478	162,914	2,466,716	18.95	1,753,505
Tarboro	3	5,280,782	181,430	5,720,122	16.90	6,010,097
Enfield	2	2,022,092	39,198	2,215,036	14.45	2,664,151
Absokie	2	2,463,627	57,289	2,648,722	17.16	3,219,576
Smithfield	2	5,538,332	259,646	6,274,488	16.54	4,923,725
Kinston	6	33,354,135	2,013,064	36,658,736	—	35,789,693
Robersonville	3	5,243,232	92,710	5,763,088	16.85	7,253,116
Williamstown	3	4,627,986	340,890	5,333,456	15.60	7,051,898
Rocky Mount	8	39,601,092	1,056,954	42,281,576	19.78	35,865,638
Farmville	4	17,552,046	357,616	18,998,362	19.19	19,134,012
Greenville	9	46,415,155	2,822,845	51,926,244	18.51	64,238,186
Goldsboro	3	8,859,760	466,816	9,678,479	16.36	6,663,162
Wilson	8*	74,753,642	3,961,756	82,532,132	20.45	75,561,417
Totals	62	254,369,093	12,070,740	279,925,103	18.94	280,786,676

NOTE: *The Carolina Tobacco Warehouse, Wilsch, N. C., failed to report its sales for the month of January, 1930.

Markets	Number Houses	Producers' Sales	Dealers' Resales	Total Sales	Average Price '29-30	'28-29	Season's Producers' Sales '28-29
(South Carolina Belt—flue-cured type No. 13)							
Clarkton	2	1,518,265	31,654	1,689,131	15.07	14.25	1,738,491
Chadbourn	2	2,751,287	179,481	3,147,706	17.61	13.02	2,695,771
Fair Bluff	4	3,546,252	218,978	4,047,598	16.61	13.66	3,653,921
Tabor	2	1,755,006	54,882	2,025,206	16.34	12.74	1,115,703
Whiteville	3	10,021,604	514,028	11,225,891	17.53	14.27	9,014,655
Fairmont	5	22,823,007	1,213,842	25,371,322	17.58	15.05	16,935,809
Lumberton	4	8,947,540	548,860	9,979,477	16.32	13.13	8,394,264
Totals	22	51,362,961	2,755,525	57,486,331	17.17	14.18	43,548,614

STATE SUMMARY

Season:			
1929-30	152	481,456,650	23,855,514
1928-29	151	484,112,867	23,246,147
			534,110,281
			537,050,475

Issued: March 20, 1930.

It will be noted that in the Old Belt in 1929 the average (225) price ranged from \$14.20 per hundred pounds at Madison to \$21.65 per hundred at Mebane for flue-cured. Type No. 11, while in the New Belt the price range was from \$14.45 per hundred at Enfield to \$20.10 at Wilson. In the South Carolina belt flue-cured Type No. 13 the average price ranged from \$15.07 at Clarkton to \$17.61 at Chadbourn. This range in price may be attributed in part to the quality of the tobacco raised in the territory contiguous to each of the markets indicated in the statement on pages 7 and 8 of this report discussing the difference between the types of soil and the character and quality of the tobacco raised.

The producers' sales during the 1929-30 season amounted to 481,456,650 pounds, which, figured with the amount of dealers' resales, amounted to 534,110,281 pounds, for an average price of \$18.40 per hundred pounds. The average price for the preceding season was \$18.78 per hundred pounds, the season's sales being less than one per cent below the previous year's. The Old Belt averaged \$18.10 per hundred, the New Belt \$18.94 per hundred, while the South Carolina Belt averaged but \$17.17 per hundred.

These figures may show a slight difference from those previously quoted herein, which is accounted for by the fact that a large amount of tobacco from North Carolina is sold on the Danville, Virginia, market, it being estimated that one-third of Danville's sales originate from North Carolina.

The economic situation at the close of the season is summarized in the Crop Reporting Service Bulletin of the State-Federal Departments of Agriculture, Raleigh, North Carolina, as follows:

"The economic situation in evidence at the close of the North Carolina sales season (now) shows the largest carry-over of flue-cured tobacco in the world's history. Even with average yields during 1930, with last year's acreage, the production will be greater than ever before. The probable intention of farmers regarding the tobacco acreage is for an appreciable increase which almost surely means a ruinous overproduction during 1930. Unfor-

unately, merely telling the growers of this situation results in an agreement upon the part of all tobacco interests that the production must be reduced. Agitation and propaganda becomes wide-spread until each farmer thinks that the other is going to reduce. The final outcome is that practically all of them increase their acreage. Even though fertilizers will be extremely difficult to secure this year, the probability is for a decided increase in acreage.

(226) "FREE ADVICE GOES BEGGING"

"It is useless to argue for a reduction in the tobacco acreage, for farming is an individualist and an independent profession and each man insists upon having his own way. He listens to but does not follow the advice of economists who spend their whole time studying the situation. Those familiar with the Burley situation know that the acreage will be greatly increased, especially in western North Carolina. They are almost surely due for an over-production and low prices this year."

The investigation did not disclose any evidence tending to support the allegations that the large tobacco companies had entered into price fixing agreements, nor was there evidence adduced showing the existence of any understanding or agreement between the large tobacco manufacturers, with reference to the purchase of leaf tobacco in this territory.

ORGANIZATION ACTIVITIES IN THE STATE OF
NORTH CAROLINA

The formation of a Tobacco Cooperative Association has been extensively advocated in North Carolina during the past year, and on September 11, 1930, pursuant to call, a mass meeting was held in Raleigh. This meeting was addressed by Governor Gardner of the State of North Carolina, and the following excerpt from his speech is illustrative of conditions that confront the farmer in North Carolina:

"The cause for the present distressing and unprofitable price for cotton and tobacco I shall not develop at

length. You are one group of farmers in North Carolina who have learned in a practical way that regular and consistent overproduction of these two crops means starvation prices for the producers. I have never advised North Carolina farmers to give up growing of cotton and tobacco. At present, I do not believe that that would be wise. But I have urged all over North Carolina that we make these two cash crops not our one and only source of income but that we supplement them and supplement them substantially with an increase in food and feedstuffs raised, in milk and butter produced, and in live stock farming. Before we can hope for a substantial return of agricultural prosperity in North Carolina, North Carolina farmers must learn first that North Carolina is a marginal cotton producing state, and second, that tobacco production must conform itself to the laws of supply and demand."

The meeting outlined a plan of procedure to relieve existing conditions in North Carolina, and as this plan (227) has an important bearing on future conditions within that state, it is thought well to incorporate the principal resolutions adopted:

"1. That the Governor of North Carolina appoint a permanent State-wide Tobacco Relief Commission, consisting of one member from each tobacco growing county to be selected at a mass meeting held in the county. The duty of this commission shall be to take steps to relieve this distressed situation in any way that may seem best and to work in conjunction with federal and State agencies, and other tobacco growing states, and to perform such other duties as may be assigned to it by the Governor. And we further recommend that the Commission so appointed by the Governor in turn appoint a chairman for each county and township within the State.

"2. That this Commission be authorized to proceed with an intensive campaign to put into effect at least a 25 per cent cut in the acreage of the 1931 crop based upon the acreage planted in 1930, and this should apply to all bright, flue-cured tobacco sections of the country ***

"4. That the State Extension Forces and the State

Department of Agriculture be called upon to launch an intensive campaign now to put into effect a better business plan of farming in North Carolina, and that the Governor be called upon to lend the influence of his great office to further the success of this campaign.* **

"6. That every tobacco grower be urged to hold off the market every pound of tobacco he possibly can until prices are substantially increased above the present levels, and that we appeal to the bankers, time merchants, and warehousemen to aid the growers in this delayed and orderly marketing. We urge furthermore the farmers not to sell any tobacco, either private or on warehouse floors, for three cents a pound or less during the remainder of the season.

"7. That we request the Governor, State College and the Department of Agriculture to recommend a competent man or men within the next two weeks to aid the tobacco counties in perfecting a business organization to direct so far as possible the orderly marketing of tobacco, and to secure information for farmers about the value of proper marketing of their tobacco.* **

"9. That we secure from the North Carolina growers (228) and consumers, including the manufacturers the types of tobacco best adapted to our soil and agricultural conditions and demanded by the trade. That this information be supplied the tobacco growers before they plant their beds, in order that they may have regard for the selection of the best seed to be used.

"10. That we move as rapidly as possible in the direction of having the tobacco offered to market properly graded. This would give to the farmers valuable information about proper grading, and we believe would insure a better price to the farmer for his tobacco.

"AMENDMENTS"

"Two amendments to these resolutions as adopted on the floor of the convention are as follows:

"First: That the mass meeting of tobacco farmers go

on record as favoring the formation of a co-operative tobacco association in North Carolina.

"Second: That the newspapers of North Carolina be urged to help the farmers in securing a better price for their tobacco."

The Greensboro, North Carolina, Daily News has the following editorial comment to make with reference to the action taken at this meeting:

"Tobacco acreage must be reduced by one-third or one-fourth and the buyers made to see that next year's crop will be lighter, more foodstuffs must be raised in tobacco growing territory, the product must be held off the warehouse floors until prices become better, types of tobacco best suited to North Carolina soil and climate must be grown, standardized grading must be adopted, and an appeal, depicting social and economic conditions, must be made to the buyers."

The News and Observer, Raleigh, North Carolina, in an editorial published on September 12, 1930, summarizes conditions and outlines the steps necessary to alleviate these conditions and bring about an improved method of marketing, in the following quoted statement:

"The farmers and others recognize that the farm problem, particularly the tobacco situation, is difficult. There are only a few buyers—only three or four in the (229) United States and about as many abroad—who use large quantities of tobacco. While they have no agreement or combination as to the buying of tobacco, there is no general or real competition, their plan as a rule being to get the weed at the lowest price possible. Likewise, there are even fewer big foreign buyers who buy for their factories. They do not compete in the real sense of competition. Therefore, tobacco, unless independent buyers who hope to make money on speculation, take part, when put on the market goes to whichever company needing that particular grade which offers the first bid. Other companies do not bid for it. As a matter of fact, the independent buyers are dependent upon selling their purchases, if large, to half a dozen com-

panies, and, therefore, in the last analysis the ten or a dozen manufacturers in this country and in Europe fix the price at which the tobacco is sold. And, inasmuch as there is no competition between the big buyers unless in exceptional cases, it may be said there is only one buyer, and that is all the big companies, at home and abroad, which refrain from such bidding as constitutes the real competition necessary to secure good prices.

“At present the farmers are, therefore, at the mercy of a few companies in the United States and in Europe. They will not receive profitable prices for their tobacco until they reduce acreage, secure government grading, obtain advances from the Federal government, and are in a position to hold the bulk of the crop for fair prices. There is no way to do this except through Co-operative Associations which take in hand acreage, seed, grading and selling.”

CO-OPERATIVE ASSOCIATIONS.

The Tobacco Growers' Cooperative Association of Virginia, North Carolina and South Carolina was incorporated in 1922, and was known as the Try-State Co-operative Association, but was unsuccessful in its operations and was placed in the hands of receivers in June 1926. This Association attempted to secure delivery of over half of the Virginia sun-cured, the Virginia dark-fired and the flue-cured types of tobacco in the three States in which it operated. The Association, however, was not successful in handling anywhere near the amount of tobacco it had figured on and the failure of the Association, as described, and the conditions causing the failure of this Association are set out in the 1928 Department of Agriculture Yearbook, as follows:

“To determine, if possible, the reasons for the failure, the Division of Cooperative Marketing made a study of (230) the association and of the environment in which it operated. It was found that failure was not due to any one cause, but to many causes. Some of these alone would, in time, have resulted in the downfall of the association; others merely hastened the time of failure. The causes of failure may be grouped under four broad

headings—those connected with (1) the membership, (2) the management, and (3) the type of organization, and (4) causes outside of the association.

“Disloyalty among the members was frequent from the beginning, and member defalcations accumulated as the years passed. This disloyalty may be attributed largely to the economic, social, educational, and psychological conditions of the growers in the Tri-State area. The percentage of tenancy is high; tobacco is often the only cash crop, and credit facilities are limited. Members were both whites and Negroes; many had low educational standards; and the percentage of illiteracy was high. They were, with few exceptions, inexperienced in cooperative marketing and untaught as to its principles, possibilities, limitations, or difficulties. Many were easily influenced by interests which were not friendly to the association.

“Mistakes in management were made from lack of experience with the cooperative form of business and lack of foresight rather than from dishonesty or insincerity. Extravagance in purchasing and operating warehouses and in salaries, secrecy as to the affairs of the association, lack of close contact with the members, and unwise policies in selling and redrying were among the factors which contributed to the failure through loss of the confidence of members.

“The association was large and cumbersome. It covered three States in which five more or less distinct types of tobacco were grown. (Fig. 221) Different problems existed in the different areas and in the selling and financing of each type of tobacco. The association was organized rapidly, with policy operations highly centralized and far removed from the growers; and in some localities questionable methods were used to obtain members—all of which added to the complexity and difficulty of management.

“Strong, active, and organized opposition was encountered from those who would be eliminated from tobacco marketing if the cooperative should prove successful. Some of the large tobacco manufacturers were

(231) unfriendly to the farmers' organization and refused to buy from it. This made it impossible for the association to sell all its tobacco and to make payments to its members, many of whom were entirely dependent upon the returns from their tobacco for a livelihood.

"The rate of mortality among farmers' cooperative tobacco marketing associations in the United States has been relatively high. Success in applying the cooperative method to tobacco marketing seems to be slow and difficult, but successful cooperative marketing of tobacco is not impossible. Tobacco cooperatives have been successful elsewhere in the United States. Difficulties to be encountered in the South are perhaps greater than those in other sections, but ably organized and well-operated associations can render to the tobacco growers of the South the benefits of an improved and efficient system of tobacco marketing."

The attention of the Commission is also called to a publication of the Department of Agriculture entitled, "Business Analysis of the Tobacco Growers' Cooperative Association," the purpose of this study being as follows:

"To enable other cooperators and cooperatives, especially those dealing with tobacco, to benefit by the policies, mistakes, and experiences of this association the economic and social background in Virginia and the Carolinas, the inception of the association, its formation, organic set-up, operations, membership relations and policies, problems, and difficulties are analyzed in considerable detail. Special effort has been made to emphasize the conditions and policies that led to the suspension of operation of the association in June, 1926".

In view of the contemplated organization of a Cooperative Marketing Association in North Carolina it is deemed pertinent to refer to certain provisions of the recently enacted Agricultural Marketing Act. Section 1 of this Act contains a declaration of policy, as follows:

"Section 1. (a) That it is hereby declared to be the policy of Congress to promote the effective merchandising of agricultural commodities in interstate and foreign

commerce, so that the industry of agriculture will be placed on a basis of economic equality with other industries, and to that end to protect, control, and stabilize the currents of interstate and foreign commerce in the marketing of agricultural commodities and their food products—.”

Section 3 provides for the establishment of an advisory committee to represent any particular commodity before the Farm Board in matters relating to the commodity.

The special powers of the Board are set out in Section 5, as follows:

“Sec. 5. The board is authorized and directed—

“(1) to promote education with the principles and practices of cooperative marketing of agricultural commodities and food products thereof.

“(2) to encourage the organization, improvement in methods, and development of effective cooperative associations.

“(3) to keep advised from any available sources and make reports as to crop prices, experiences, prospects, supply, and demand, at home and abroad.

“(4) to investigate conditions of overproduction of agricultural commodities and advise as to the prevention of such overproduction.

“(5) to make investigations and reports and publish the same, including investigations and reports upon the following: Land utilization for agricultural purposes; reduction of the acreage of unprofitable marginal lands in cultivation; methods of expanding markets at home and abroad for agricultural commodities and food products thereof; methods of developing by-products of and new uses for agricultural commodities; and transportation conditions and their effect upon the marketing of agricultural commodities.”

The authorization given the Board in Section 7 of the

Act is of particular interest to all cooperative marketing associations:

"Sec. 7. (a) Upon application by any cooperative association the board is authorized to make loans to it from the revolving fund to assist in—

"(1) the effective merchandising of agricultural commodities and food products thereof:

"(2) the construction or acquisition by purchase or (233) lease of physical marketing facilities for preparing, handling, storing, processing, or merchandising agricultural commodities or their food products;

"(3) The formation of clearing house associations;

"(4) extending membership of the cooperative association applying for the loan by educating the producers of the commodity handled by the association in the advantages of cooperative marketing of that commodity; and

"(5) enabling the cooperative association applying for the loan to advance to its members a greater share of the market price of the commodity delivered to the association than is practicable under other credit facilities.

"(b) No loan shall be made to any cooperative association unless, in the judgment of the board, the loan is in furtherance of the policy declared in section 1 and the cooperative association applying for the loan has an organization and management and business policies, of such character as to insure the reasonable safety of the loan and the furtherance of such policy.

"(c) Loans for the construction or acquisition by purchase or lease of physical facilities shall be subject to the following limitations:

"(1) No such loan for the construction or purchase of such facilities shall be made in an amount in excess of 80 per centum of the value of the facilities to be constructed or purchased.

"(2) No loan for the purchases or lease of such facilities shall be made unless the board finds that the purchase price or rent to be paid is reasonable.

"(3) No loan for the construction, purchase, or lease of such facilities shall be made unless the board finds that there are not available suitable existing facilities that will furnish their services to the cooperative association at reasonable rates; and in addition to the preceding limitation, no loan for the construction of facilities shall be made unless the board finds that suitable (234) existing facilities are not available for purchase or lease at a reasonable price or rent.

"(d) Loans for the construction or purchase of physical facilities, together with interest on the loans, shall be repaid upon an amortization plan over a period not in excess of twenty years."

These, and other provisions contained in the Agricultural Marketing Act, should give an impetus to the organization of cooperative associations and enable them to operate with sufficient capital, direction and cooperation. This is particularly true of tobacco marketing cooperative associations, and in view of the experience of the Tri-State Cooperative Association previously referred to, should give encouragement to the farmers in the flue-cured district and enable them to take the necessary steps to organize and operate their own marketing facilities which, in conjunction with government grading and other features which will be discussed later, should assist materially in establishing tobacco growing on a profitable basis.

(235)

GEORGIA

SEASON OF 1930

TYPE 14

The investigation of marketing conditions in the State (236) of Georgia was undertaken at the direction of the Commission following receipt of telegrams from Senator George and Congressman Edwards of the State of Georgia and Congressman Yon of the State of Florida.

The telegram from Senator George was received July 31, 1930, and reads as follows:

"It is obvious that manufacturers and exporters bright leaf tobacco now coming on market in Georgia have combined to buy present crop much below actual cost of production. Stop. They are attempting to take advantage of general conditions when nothing in the industry justifies it. Stop. I believe that capable investigators should be sent into the tobacco belt at once to carefully survey situation—(Signed) Walter F. George."

Congressman Charles G. Edwards also telegraphed the Commission the same day as follows:

"Conditions point strongly to fact tobacco trust operating illegally in restraint of trade in Georgia in fixing prices on tobacco being bought for interstate and foreign shipments. Please rush immediate investigation as the trust has evidently fixed price the buyers are to pay far below cost of production and farmers are being shamefully and brazenly robbed of their products generally believed all the buyers are in the pool with the trust and the antiquated and unfair auction and short-marketing system all of which are fixed by the buyers play into hands of the heartless thieves who are robbing Georgia farmers in violation of law. Please see if something cannot be immediately done to stop this high handed stealing which is costing producers millions of dollars. (Signed) Charles G. Edwards, M. C."

The investigation was promptly undertaken, and the following facts developed.

Georgia is located in the southernmost part of the flue-cured tobacco district, and it is only within recent years that the cultivation of tobacco has been undertaken in this State. The type of tobacco grown in this territory is known as Type 14, described by the Department of Agriculture as follows:

"That type of flue-cured tobacco commonly known as southern flue-cured, southern bright, southern district (237) bright, new belt of Georgia and Florida flue-

cured; and produced principally in the southern sections of Georgia and to some extent in Florida, Alabama, and Mississippi."

The production of this type of flue-cured tobacco has shown a tremendous increase since 1922 when the State produced 4,160,000 pounds on 9000 acres selling at an average price of 21.8 cents per pound. The preliminary figures for 1930 show a production of 103,224,000 pounds on an acreage of 119,600, the average selling price being 9.9 cents per pound. The table set out below gives the acreage, production and price per pound in the State of Georgia for the years 1922 to 1930, inclusive:

Year	Acres	Production 1000 lbs.	Average Price Per lb.
1922	9,000	4.160	21.8
1923	15,200	9.437	27.2
1924	38,450	29.596	21.7
1925	66,200	47.400	14.4
1926	51,100	39.095	23.6
1927	80,500	57.960	18.9
1928	121,000	82.867	12.8
1929	108,600	88.184	18.4
1930*	119,600	103.224	9.9

*Preliminary, subject to revision.

The State of Georgia has the same system of marketing tobacco as that used in other sections of the flue-cured district, all tobacco being sold at auction warehouses, and the conditions are quite similar to those in North Carolina, which conditions have been depicted in the first part of this report. The price received by the tobacco farmer this year is much lower than that received for the 1929 crop, and great dissatisfaction has been evidenced on the part of the farmer owing to these low prices.

The tobacco grower in Georgia markets his tobacco under the loose leaf, or untied, system, which penalizes the tobacco grower much more than in that territory where tobacco is tied before being placed on the warehouse floor.

It was also noted that a large majority of the tobacco farmers apparently were not sufficiently trained in the art of grading or sorting, or would not take the trouble to properly grade or sort tobacco, with the result that the piles of tobacco presented for sale contained so many varying grades of tobacco, which rendered it highly improbable that the tobacco farmer would, under these conditions (239) receive a fair price for his tobacco. This practice is highly prejudicial to the best interests of the tobacco grower, and until he learns to properly grade and sort his tobacco he will not secure the price which he would secure under proper marketing conditions.

This tobacco, as stated, is packed loose in baskets and placed on the warehouse floor, and after a sale has been completed the warehouse floor is literally strewn with tobacco from the various piles, which presumably becomes the property of the warehouse. It must be remembered, however, that the Georgia tobacco farmer has not had the training or experience of his neighbors in other sections such as in the Old Belt, and it is highly desirable that some system be adopted whereby he will become educated in the proper method of sorting and grading.

The buying season in Georgia opens around the first of August, and continues for a period of approximately thirty days, which period, in the estimation of those familiar with conditions in the State of Georgia, is entirely too short. It is held by these people that the tobacco farmer has not a sufficient period of time in which to cure and prepare his tobacco for marketing after the harvest season. The claim is made that the market opens so early and continues for so short a period that he does not have time to properly cure and grade his tobacco, such as is done in the Old Belt. It was noted on the various warehouse floors that there was a considerable amount of tobacco which had not been properly cured, which, when considered with the fact that this year's crop was inferior in quality to that of the 1929 crop, is highly detrimental to the best interests of the tobacco farmer.

The sale of tobacco on each market with the average

price per pound for the seasons 1929 and 1930 are set out immediately below, these being taken from a compilation prepared by the Georgia Department of Agriculture. These figures were prepared from the returns received from the 52 warehouses in the State of Georgia, it being a requirement of the State that each tobacco warehouse make a weekly tobacco report to the State containing information as to sales and the amount received.

Location and Name of Warehouse	1929		1930	
	Pounds Sold First-Hand	Ave. Price Per Lb.	Pounds Sold First Hand	Ave. Price Per Lb.
Adel	3,243,407	20.08	4,669,829	11.02
Bainbridge	463,852	15.87	630,120	7.20
Baxley	3,451,392	18.25	3,723,500	8.87
Blackshear	8,865,950	18.43	9,390,677	10.18
Calro	845,472	15.93	1,090,556	7.87
Camilla	1,209,072	18.27	1,513,112	8.25
Claxton	2,278,536	17.00	3,172,126	9.07
Douglas	10,840,937	18.65	12,904,970	9.60
Fitzgerald	1,349,609	17.70	1,783,792	8.68
Hahira	3,150,965	19.71	3,146,142	11.20
Hazelhurst	2,292,016	19.74	2,056,826	9.72
Metter	4,047,558	15.04	4,306,638	8.71
Moultrie	4,929,444	19.50	7,664,148	10.25
Nashville	7,623,089	21.10	8,497,070	11.08
Pelham	2,343,306	15.63	2,193,146	9.19
Quitman	1,222,221	16.74	1,373,548	10.21
Statesboro	2,264,932	14.72	3,329,064	8.91
Thomasville	585,190	17.15	438,466	9.86
Tifton	9,891,916	19.84	11,090,340	10.55
Valdosta	8,337,866	18.27	11,521,370	10.88
Vidalia	8,746,088	16.17	9,372,732	8.15
Waycross	2,760,702	19.00	2,614,847	9.14
Total Tobacco	90,743,520	18.37	106,483,019	9.86

There is included in the 1929 Producers' Sales 2,576,966 pounds of tobacco grown in States immediately contiguous to Georgia, and in 1930 there is included 3,177,860 pounds of tobacco grown in these States. However, for the purpose of this report all this tobacco may

be considered as Georgia grown as the total is too small to have any appreciable effect on the price. The net total of Georgia sales for 1929, therefore, would be, 88,166,554 pounds, and net sales for 1930 amounted to 103,305,159 pounds. It will be noted, by reference to page 28 that the production of tobacco in this district has been increasing heavily from 1922 with the exception of the year 1926, at which time there was produced 39,095,000 pounds at an average price of 23.6 cents per pound. Production the following year increased approximately 18,000,000 pounds which sold at an average of 18.9 cents per pound. In 1928 production increased 25,000,000 pounds, which sold at an average of 12.8 cents per pound. In 1929 production increased approximately 6,000,000 pounds, the quality of the tobacco produced being excellent and the average price for the 1928 crop being 18.4 cents per pound. This year's crop shows (240) an increase of 15,000,000 pounds over that of 1929, the general consensus of opinion being that the quality of the tobacco was much inferior to that of 1929, the average price being 9.8 cents per pound, or approximately just one-half the average price received for the 1929 crop.

The investigation in this State did not disclose any facts in support of the allegations that the large tobacco companies had entered into an agreement or understanding to fix a price at which leaf tobacco would be purchased in this State. The allegations were general in scope and no specific information was furnished or obtained which would show that there was any understanding or agreement existing between or among the large manufacturers operating in the State of Georgia. The conditions existing in this State are somewhat similar to those existing in the State of North Carolina, the marketing system being the same, in addition to which the tobacco farmers do not market their tobacco properly cured, graded and sorted. These factors will be discussed in the concluding part of this report, together with certain recommendations with reference thereto.

It has been the observation of the writer that a fairly comprehensive idea of conditions within a State on a given subject can be obtained in a greater or less degree from the Press of that State, and there are quoted be-

low excerpts from editorials appearing in a number of newspapers in Georgia which are rather enlightening. The following quotation is an excerpt from an editorial appearing in the Macon (Georgia) Telegraph:

"It will be a serious mistake however, if the Georgia growers do not survey the wreck of this year's crop to determine what they can do to prevent a repetition: The Telegraph does not pose as an expert, nor does it pretend to give advice, but it is apparent even to the layman that if the Georgia growers do not organize, they can never effect certain reforms that obviously ought to be effected.

"For instance, they can never receive help in financing from the federal farm board until they organize a co-operative.

"They can never force the buyers to abandon the present auction method of which so many growers complain, in favor of a government-grading method of sale.

"They can never handle tobacco as anything but a perishable crop that must be sold when it has been brought to the right condition unless they organize a co-operative and build a storage warehouse on specifications that will provide for the preservation of the tobacco. (241)

"They can never bring any uniformity of method of sale to the tobacco belt until they organize. Such a well-informed man as A. P. Brantley, of Blackshear, said in an article recently in the Blackshear Times, that the 'only remedy . . . which offered any hopes of improving the situation' was to grade and tie the tobacco. It is not physically possible for buyers, in the ten seconds allowed for the auction of each lot, to grade the tobacco. What they do is to offer a price for the lowest grade in the lot.

"They can never regulate production until they organize. The situation has become such that the tobacco companies that buy the better grades export a great volume of it. Increased production presents a serious situation for the growers.

"Unless the growers use this year's low prices as a springboard from which to take the leap that will put them on a common footing with organized buying, the agitation will have been wasted."

The Atlanta Constitution, of August 11, 1930, comments on this situation in the following language:

"From all the evidence at hand it is conclusive that Georgia tobacco growers have allowed themselves to be misled in the matter of grading and tying their crops before putting them on the market.

"Georgia bright leaf tobacco is a desirable product and should bring profitable prices to the growers, but they must give up hope for such prices until they learn the wisdom to do with their leaf as the growers for other competing markets do.

"The undeniable fact is that next year and afterwards they must properly grade and tie their crops, or surrender them at a loss to the buyers who profit by low prices for loose leaf, however, good the quality."

The same publication, under date of August 19, 1930, in an editorial captioned "A Lesson And Its Moral" has the following to say:

"As a matter of fact, the low prices in south Georgia have been due to two capital omissions on the part of the growers. One is their failure to organize and thus be able to obtain aid through the co-operative marketing branch of the federal farm board, and the other is their refusal to grade and tie their tobacco as is done in other states. According to A. P. Brantley, of Blackshear, in (242) south Georgia, the greatest influence in lowering prices for bright leaf tobacco, was the neglect of the growers to heed the advice of the tobacco buying companies.

"Mr. Brantley wrote recently in a communication to The Constitution that prior to the opening of the Georgia market, an official of one of the large export buying companies traveled through the southern part of the state, 'telling warehousemen these companies hoped

Georgia's tobacco crop would be tied; that they expected to be liberal buyers if it was tied, and, further, expected to pay more for tied than untied tobacco.'

"A little later in the season, J. C. Robertson, 17 years a tobacco expert, stated in The Constitution that the two principal causes of low prices for tobacco were, first, that Georgia tobacco growers will not grade their tobacco, and second, will not tie it. Last year, Mr. Robertson was in Wilson, N. C., and one buyer and seller showed him tobacco that had been bought in Georgia. He had graded and tied it, and was getting from 5 to 15 cents per pound more than he paid for it.

"When the tobacco growers of Georgia, individually or through a co-operative marketing organization, study and meet the requirements of buyers, there will be less complaint of lower prices even when the demand fails to accord fully with the supply.

"This is the lesson to be learned from the experience of this year's crop, and the moral to guide next year's offering."

The Bureau of Agricultural Economics of the Department of Agriculture released on September 15, 1930, a bulletin dealing with the tobacco price situation as of September, 1930, the portion quoted below dealing with conditions in the flue-cured district:

"The average auction floor price of Type 14 grown in Georgia and Florida for the 1930 season was about 10 cents per pound compared with 18.4 cents per pound in 1929 and 12.8 cents per pound in 1928. The quality of the crop in this section was below that of last season. The prices of Type 12 and 13 grown in eastern North Carolina and South Carolina to date (Sept. 12) have average about 25 per cent below those for the same grades last season. There has been some improvement (243) in prices as the season has advanced. Lugs appear to be lower compared with last season than cutters and leaf. The quality of the crop in eastern North Carolina is better than last season. In South Carolina the quality appears to be fully as good as last season.

"The total acreage of flue-cured types is 3.5 per cent

larger than in 1929. The production indicated on September 1 is 772.7 million pounds, compared with a crop of 750.7 million pounds in 1929. The stocks of old leaf in the hands of dealers and manufacturers on July 1, 1930 were 599.3 million pounds compared with 590 million pounds a year earlier. The total supply this season based on September 1 crop conditions and stocks on July 1 is 1373.0 million pounds compared with 1340.7 million pounds in 1929 and 1305.8 million pounds in 1928.

"Since 1916 the disappearance of flue-cured tobacco including domestic consumption and exports has increased at an average rate of about 33 million pounds a year. Allowing for this increase in consumption, the number of months supply this season is not greatly different from that at the beginning of either of the two previous seasons. In 1928 the season's average price was 17.7 cents per pound and in 1929 it was 18.1 cents per pound.

"During the past five years the increase in the quantity of flue-cured tobacco used in making cigarettes has more than offset the decrease in the quantity used in making chewing and smoking tobacco. The net increase in domestic consumption during this period has averaged almost 5 per cent per year. During the year ended June 30, 1930 the increase was about 3 per cent. Cigarette tax sales maintained about the usual rate of growth from July to December, 1929, being 9 per cent larger than for the corresponding period of the previous year. From January to June, 1930, cigarette tax sales were 1.5 per cent larger than for the corresponding period of the previous year. From January to June, 1930, cigarette tax sales were 1.5 per cent larger than for the corresponding period of last year. The total cigarette tax sales for the 12-month period were 5.2 per cent larger than for the corresponding period of last year. The total cigarette tax sales for the 12-month period were 5.2 per cent larger than the previous year compared with an increase of 8.2 per cent for the previous year. It may be that unfavorable business conditions affected consumption during the early part of 1930 or it may turn out that cigarette consumption is increasing at a slightly slower rate. In either case present (244) indications are that the domestic consumption

of this type of tobacco during the current year will exceed that of the year just closed. Cigarette tax sales in June, 1930, were 8.4 per cent and in July they were 10.6 per cent larger than for the corresponding months of last year.

"Exports of flue-cured tobacco during the year ended June 30, 1930 were 429.9 million pounds in 1929 and 328.9 million pounds the previous year. In July, 1930, exports were 18.0 million pounds compared with 14.1 million pounds in July 1929. The United Kingdom and China are the principal importing countries.

"There has been some uncertainty as to the effect of low exchange rate and unsettled conditions in China. However, exports to China during the past few months have exceeded those of the corresponding period of the previous year and reports indicate that the cigarette trade in China is active. The total exports to China during the year just ended were 127.1 million pounds compared with 131.3 million pounds, the exceptionally large total of the previous year.

"Exports to the United Kingdom during the year ended June 30, 1930 were 186.6 million pounds compared with 171.4 million pounds the previous year. Stocks in the three ports of entry, (London, Liverpool and Glasgow) are slightly larger than a year ago. However, the exports of flue-cured tobacco to the United Kingdom have increased rapidly in recent years and under these conditions a small increase in stocks at the ports of entry does not necessarily mean unfavorable market conditions. Colonial grown flue-cured tobacco does not appear to be making much headway in displacing American grown types and exports to the United Kingdom this season are expected to compare favorably with those of the past two seasons.

"Unless prices improve materially during the remainder of the marketing season an acreage reduction is probable next season. Recent studies indicate that if farmers respond to prices and other factors as in recent years the acreage in Georgia and Florida will be reduced about 20 per cent and should present prices prevail during the remainder of the season the area in

the other sections would be reduced between 5 and 10 per cent."

Cigarette Prices, Production, Etc.

The complaints filed with the Commission practically (245) all called attention to the fact that the large tobacco manufacturers had increased the wholesale price of cigarettes 40¢ per thousand in the latter part of 1929, although the price paid for leaf tobacco was claimed to be less than the preceding year, citing this as additional evidence of an alleged illegal working agreement among the manufacturers.

It appears that the leading tobacco manufacturers reduced the wholesale price of cigarettes to six dollars per thousand, less the usual discounts of 10 and 2 per cent, effective April 21, 1928, this constituting a reduction of 40¢ per thousand. This reduction in price was the first since October 31, 1922, and was evidently brought about by severe competitive conditions among the manufacturers as well as among the wholesalers and retailers of tobacco products. The government tax on cigarettes amounts to \$3.00 per thousand, so the reduction in manufacturing prices was actually from \$3.40 per thousand to \$3.00 per thousand, plus trade discounts, amounting to approximately 11.7 per cent.

One of the leading tobacco journals, in discussing the action taken by these manufacturers, states that "The most significant feature of this readjustment is that it gives thousands of jobbers and hundreds of thousands of retailers throughout the country a new lease of life, providing them with a profit margin heretofore denied by competitive merchandising conditions.

* * * * *

"The fundamental reason for the reduction is believed to be an effort to correct what, in effect, was price cutting by a particular manufacturing company which has been accused of having given 'inside' prices to favored customers.

"Whatever the real cause prompting the downward re-

vision in wholesale cigarette prices, the greatest benefit of this action will be reaped by the jobbers and dealers if the price of fifteen cents a package to consumers is maintained. The leading cigar store chains have indicated that they will maintain such prices and thus far have done so."

This same journal estimates that the price reduction put into effect by the three leading manufacturers would cut into the earnings to the extent of \$33,000,000 to \$34,000,000 annually, based on an estimate of 85 per cent of the total output controlled by these manufacturers.

It has been contended by many tobacco jobbers that (246) the margin of profit allowed by the manufacturers was insufficient to operate a tobacco jobbing business successfully, and that there had been constant price cutting in the jobbing trade as well as among the retail outlets. The price reduction put into effect on the date indicated above apparently did not solve the situation involving the industry, and on October 1, 1929 the three principal manufacturers increased the wholesale price of cigarettes to \$6.40 per thousand, thus restoring the price level which prevailed prior to the price reduction in April, 1928.

The Wall Street Journal in its issue of October 18, 1929, states that by this increase in price the leading cigarette manufacturers, on the basis of estimated current rate of production, made available to themselves approximately forty million dollars and in speaking of the prospect of the grower receiving more for leaf tobacco because this increase in price, stated as follows:

"Another extremely important factor in consideration of the advantages accruing to the cigarette manufacturers is the possibility that higher prices will be paid during the ensuing year for tobacco entering into the manufacture of cigarettes. While last year showed record crops of the type of tobacco entering such manufacture, with a fair price for the product, tobacco farmers as a whole have not been receiving a price sufficient to cover cost of growing with a reasonable profit, and in some cases not even sufficient to cover costs.

"This year, as a result of the fair results last year, a record acreage was planted for cigarette type tobaccos, but drought seriously reduced the crop and lowered the quality of the tobacco, so that return to the farmer will probably be unsatisfactory.

"With the steady and sensational growth in cigarette production, demand for raw material is naturally experiencing a simultaneous growth, and it is likely that in order to insure growth in the tobacco crops, manufacturers will increase their payments to farmers."

This same idea is expressed in the United States Tobacco Journal in an editorial contained in its October 12, 1929 issue, reading in part as follows:

"Nor, is it believed, will the measure taken by cigarette producers fail to benefit the condition of those tobacco growers from whom they secure the vast quantities of raw materials used in the manufacture of cigarettes. So recently as within the past fortnight growers (247) of Carolina tobacco met with their Senators and Congressmen and with representatives of the large buying interests to seek a remedy for conditions brought about by this season's prices for tobacco. It is assumed that with the added increment resulting from the higher wholesale cigarette rate just established, manufacturers will find it possible to pay a more liberal price for raw materials, thus ensuring the vast tobacco acreage so vital for the production of cigarettes in consistent volume with the rapidly growing demand."

The reaction to the increase in price, from the viewpoint of manufacturers' profits, and the difficulties confronting the retailer, is expressed in the Wall Street Journal of October 7, 1929, as follows:

"Retailers' Situation Difficult.

"For the manufacturers, the price advance will mean a good increase in profits, but for the retailer is further complicates an already difficult situation. With the establishment of the higher prices the margin of profit for the retailer, which has been slight, is still further decreased. With the popular cigarettes now selling at

2 packages for 25¢ or 12.50 cents a package, to which they were cut last spring, the gross margin of profit is only about 10%."

In view of the charges made by the complainants it is thought desirable to outline briefly the magnitude of the cigarette manufacturing industry.

The annual report of the Commissioner of Internal Revenue for the fiscal year ending June 30, 1930 states that "Collections from tobacco taxes continue their steady upward trend, amounting to \$450,339,060.50 for the year, a new high level. The total collections show an increase of \$15,894,517.29, or 3.66 per cent, compared with 1929; they represent more than 71 per cent of the miscellaneous internal revenue in the fiscal year 1930 and exceed total internal revenue receipts from all sources for any year prior to 1916. Collections from taxes on small cigarettes established another record, amounting to \$359,816,274.69, which is 79.9 per cent of the total tobacco taxes collected and an increase of \$17,864,723.47 or 5.22 per cent, compared with the previous year."

The production of cigarettes for the calendar years 1920 to 1929, inclusive, taken from the same report, is as (248) follows:

CIGARETTES

Year	Weighing more than 3 pounds per 1,000	Weighing not more than 3 pounds per 1,000.
	Number	Number
1920	28,038,552	47,430,105,055
1921	14,518,266	52,085,011,560
1922	17,450,456	55,763,022,618
1923	18,065,858	66,715,830,430
1924	16,054,285	72,708,989,025
1925	17,428,807	82,247,100,347
1926	13,239,765	92,096,973,926
1927	11,432,360	99,809,031,619
1928	10,403,004	108,705,505,650
1929	9,952,480	122,392,380,846

It must, however, be kept in mind, as has been shown in this report, that despite the tremendous increase in cigarette production the stocks of flue cured tobacco have been steadily increasing, reference being had to the table on page 10 of this report.

Standard Trade and Securities Service, in its bulletin of December 12, 1930, under the heading "Tobacco Forecast", states:

"Cigarette withdrawals for consumption in the first 10 months of 1930 exceeded those of the similar 1929 period by only a slight margin, and it is now evident that any gain registered in the full year will be of small proportions. However, primarily because of higher wholesale prices of cigarettes existing during 9 months of this year, a substantial gain in aggregate net income of the principal producers is anticipated. * * *

"Stocks of all leaf tobacco held in the United States by dealers and manufacturers aggregated 1,649,000,000 pounds, compared with 1,611,938,000 as of October 1, 1929, and 1,725,653,000 as of July 1, 1931. It is noteworthy that only the cigarette type stocks have shown a recent advance.

"Thus cigarette manufacturers have made, and are making, important additions of inventory this year on a basis substantially more favorable than that of recent (249) years. Indications are that such opportunity will, in the main, continue during the near term. Profits, of course, are being aided, but usually raw material costs are averaged over a 3-year period, so that benefits arising from favorable purchases will be spread out over the longer future.

"Cigarette Sales Gain Thus Far Small"

"Aggregate of cigarette withdrawals for consumption in the first 10 months of 1930 reached 102,998,602,000, representing an increase of 1.24% over the total for the similar period of 1929. This showing, in the light of general trade conditions, is commendable, but, as indicated in the following table of increases or decreases in monthly withdrawals for consumption over the preced-

ing year, declines this year have been more numerous than usual.

	1928	1929	1930
Jan.	15.1%	21.4%	0.4%
Feb.	14.0	7.0	5.0%
March	5.5	2.6	5.4
April	*4.6	28.0	*0.7
May	4.1	25.6	*7.7
June	11.1	11.8	8.4
July	17.4	10.3	10.5
Aug.	14.0	2.8	*3.2
Sept.	1.4	13.4	*1.5
Oct.	16.0	13.0	*2.2
Nov.	5.4	6.0	—
Dec.	9.3	10.0	—

*Decrease

"Partially explaining recent declines in withdrawals from a year ago is the increase in wholesale cigarette prices made October 1, 1929, before which purchase of cigarettes was relatively heavy, in anticipation of the advance. Outstanding among the probable causes of the trend in the last few months, however, is the general business depression. Continuation of unemployment and reduced purchasing power have unquestionably been attended with smoking economy."

In view of the charges made by the applicants in this matter it is thought proper to call the attention of the Commission to the financial condition of the four principal tobacco manufacturers.

The combined net earnings of the four manufacturers referred to for the year 1929 amounted to \$85,742,809 this being an increase of \$9,277,875 over the preceding (250) year. During the major part of 1929 cigarettes were being marketed at the reduced price of \$6.00 per thousand, the increase in profits being attributed in part, to manufacturing economies and to the extensive advertising campaigns vigorously conducted by the manufacturers. One of the manufacturers above referred to showed a decline in profits for the year of \$480,772, this

manufacturer's profits, however, having shown a decline for the past four years.

It is the practice in the tobacco manufacturing industry to average the cost of raw material over a period of years using the resultant average as the cost of the raw material used in current manufacturing. It is apparent because of this practice that price fluctuations in the leaf tobacco market in any particular year do not have any marked effect on the industry. Production costs in the cigarette industry may, therefore, be said to remain fairly stable, manufacturing costs, however, being lessened by the increasing volume of production, and the introduction of improved machinery such as the cigarette packing machine the capacity of which is said to have been doubled within recent years. In view of the fact that the manufacturers have had the benefit of the present wholesale price of \$6.40 throughout the year 1930 it may be reasonably expected that earnings will establish a new record.

The financial condition of the four principal tobacco manufacturers for the year ending December 31, 1929, as taken from Poor's Manual, 1930 edition, is as follows:

R. J. REYNOLDS TOBACCO CO.

(251) Income and Surplus Accounts

	1929
*Net earnings -----	\$32,210,521
Dividends -----	25,500,000
Surplus -----	\$ 6,710,521
Previous Surplus -----	44,869,338
Total surplus, Dec. 31 -----	\$51,579,859
Common shares outstanding -----	10,000,000
Earnings per Common share -----	\$3.22

*After deducting all charges and expenses of management, and making provisions for interest, taxes, allowances, depreciation, advertising, etc.

General Balance Sheet, December 31

Assets—	1929
Real estate, plants, equipment, etc	\$ 25,211,769
Trade marks, good will, etc.	1
Securities owned	*19,601,595
Current Assets—	
Accounts receivable for merchandise	11,426,731
Inventories	90,965,964
Cash	18,139,801
Total current assets	\$120,532,496
Notes and accounts rec. (not current)	5,017,846
Deferred assets	581,136
Total	\$170,944,843
Liabilities—	
Capital stock	\$100,000,000
Current Liabilities—	
Accrued interest, taxes, etc.	5,993,649
Bills and accounts payable	3,783,321
Total current liabilities	\$ 9,776,970
Reserved for depreciation	7,758,490
Reserve for contingencies	1,829,523
Profit and loss	51,579,559
Total	\$170,944,843
Net Working Capital	110,755,526

*Includes approximately 400,000 shares of Company's Common "B" stock purchased during 1929.

(252) AMERICAN TOBACCO CO.

Income Account. Year ended December 31

1929

*Net earnings, after charges, expenses, etc.
(incl. Federal Taxes) ----- \$ 30,231,348
Miscellaneous income -----

Total net income ----- \$ 30,231,348

Bond, etc., interest ----- 48,679
Premium on bonds purchased ----- 4,065
Preferred dividends (6%) ----- 3,161,982
Common dividends ----- 21,091,536

Total deductions ----- \$ 24,306,262

Surplus for year ----- 5,925,086
Times interest earned ----- 621.03
6% Preferred shares outstanding ----- 526,997
Times Preferred dividend earned ----- 9.54
Common shares outstanding ----- 804,848
Common "B" shares outstanding ----- 1,538,660
Earnings on combined Com. and Com. "B"
shares ----- ** 11.53

*The statement of earnings includes only the dividends received from those companies a part only of whose stock is owned by this company; but it includes the total net profits for the year of companies all of whose stock is owned by, or held in trust for, this Company.

**Equal to \$13.17 on 2,050,564 average shares outstanding during the year.

General Balance Sheet, December 31

1929

Assets—

Real estate, machinery, fixtures, etc. ----- \$ 13,815,324
Brands, trade-marks, patents, good will, etc. 54,099,430

Current Assets—

Leaf tobacco, mfg. stocks and supplies, etc.	\$102,541.554
Cash	20,490,152
Collateral call loans	9,879,232
Bills and accounts receivable	13,855,932

Total current assets ----- \$146,766,870

Stocks and bonds owned	47,493,966
Due by affiliated cos	2,772,399
Prepaid interest, insurance, etc.	457,918

Total ----- \$265,405,907

(253)

1929

Liabilities—

Common stock	\$ 40,242,400
Common stock "B"	76,933,000
Preferred stock	52,699,700
Funded debt	1,087,350
Dividend scrip	4,791
Dividend certificates	5,833

Current Liabilities—

Preferred dividends payable	\$ 790,496
Accrued interest	17,772
Accounts and bills payable	2,650,550
Provision for advertising, taxes, etc.	7,428,121

Total current liabilities ----- \$ 10,886,939

Due to affiliated cos.	2,676,562
Surplus	80,869,332

Total ----- \$265,405,907

New Working Capital	\$135,879,931
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LIGGETT AND MYERS TOBACCO CO.

Income Account, Year Ended December 31

	1929
Total profits -----	\$ 23,720,288
Premium on bonds purchased -----	25,106
Balance -----	\$ 23,695,182
Interest charges -----	1,678,054
Balance for dividends -----	\$ 22,017,028
Preferred dividends -----	1,575,987
Common dividends -----	13,071,190
Total dividends -----	\$ 14,647,177
Surplus for year -----	7,369,851

General Balance Sheet, December 31

(254) Assets—	1929
Real estate, machinery and fixtures -----	\$ 22,609,875
Less depreciation -----	9,864,236
Balance -----	\$ 12,745,639
Brands, trade-marks, good-will, etc. -----	1
Current Assets—	
Leaf Tobacco, manufactured stock, etc.	103,181,694
Cash -----	16,581,734
Bills and accounts receivable -----	12,780,804
Securities -----	4,476,164
Total Current assets -----	\$137,020,396
Stock in subsidiary companies -----	492,534
Total -----	\$150,258,620

Liabilities—

Common stock -----	21,496,400
Common "B" stock -----	43,859,550
Preferred stock -----	22,514,100
Funded debt -----	28,306,200

Current Liabilities—

Interest accrued -----	545,556
Preferred dividend payable, Jan. 1 -----	393,997
Bills and accounts payable -----	9,286,600
Reserve for taxes, advertising, etc. -----	*2,658,150

Total current Liabilities ----- \$ 12,884,303

Special reserves -----	773,183
Surplus -----	20,424,884

Total ----- \$150,258,620

Net Working Capital ----- \$124,136,093

*Reserve for taxes only.

(255) P. LORILLARD CO.

Income Account, Year Ended December 31

	1929
*Net income -----	\$ 3,361,361
Premium on 7% bonds -----	7,810
Bond interest -----	2,016,893
Balance for dividends -----	\$ 1,336,656
Preferred dividends -----	791,532
Common dividends -----	
Surplus for year -----	\$ 545,124

*After deducting all charges and expenses of operation, including reserve for Federal taxes.

General Balance Sheet, December 31—

Assets—

1929

Real estate, machinery, etc. -----	\$ 13,509,172
Brands, trademarks, good will, etc. -----	21,268,339

Current Assets—

Inventories -----	52,374,691
Cash -----	10,774,896
Bills and notes receivable -----	1,879,711
Accounts and bills receivable -----	5,611,800

Total current assets ----- \$ 70,641,098

Amounts due from subsidiary Cos. -----	1,750,089
Stock in other cos. and Liberty bonds -----	2,167,500
Deferred assets -----	675,000

Total ----- \$110,011,198

Liabilities—

Common stock -----	\$*44,989,255
Preferred stock -----	11,307,600
Common stock dividend certificates -----	41,577
Common dividend scrip -----	770
Funded debt -----	35,012,200

Current Liabilities—

Accounts and bills payable -----	679,515
Interest accrued -----	798,105
Dividends payable in Jan -----	197,883
Reserve for adv. funds, taxes, etc. -----	3,231,151

Total current liabilities ----- \$ 4,906,554

Surplus ----- 13,753,242

Total ----- \$110,011,198

Net Working Capital ----- 65,734,544

*Represented by 1,908,505 no par shares.

UNITED STATES GOVERNMENT GRADING
(256) SYSTEM

The present system of marketing leaf tobacco, in the flue-cured districts, is regarded by the writer as unsound, uneconomical and highly prejudicial to the interests of the tobacco farmer, as well as to the manufacturer, and has given rise to more dissatisfaction and complaints, at least among the farmers, than any other factor. This is particularly true in those sections where by training or experience the farmer has learned to properly grade and sort tobacco. Many of these complaints are based on the unstability of prices as evidenced by the wide range in prices paid for different piles of tobacco of apparent similar quality.

It has been stated that tobacco is sold at the rate of approximately one pile every ten seconds, and under this system of high-pressure salesmanship it is manifestly impossible for any number of buyers to make a careful inspection of the tobacco offered, and no matter how expert the buyers may be it is unreasonable to believe that a group of buyers on any warehouse floor can inspect, bid and buy tobacco from a fair competitive standpoint under the present system. It is a physical impossibility, and these conditions will continue unless some system is devised whereby there can be some authentic determination of quality and grade.

The Department of Agriculture, in its Pamphlet entitled, "Business Analysis of the Tobacco Growers' Cooperation Association", states that "with only a relatively few buyers, with no grading system or market information service, and with the rapid method of selling, gross inequalities in prices occur, and the system is open to grave and serious abuses." * * *

"On the whole, the farmers are practically forced to sell their tobacco at whatever price may prevail when their tobacco is ready to market. The inability of the majority of the farmers to withhold their tobacco from the market and the ability of the large companies to stay off the market makes the auction-floor system of marketing tobacco essentially a buyer's market. This

point is extremely important when regarded in relation to the success of cooperative marketing of tobacco. The average tobacco grower has little or no knowledge as to market conditions or as to what would be a reasonable price for his crop of tobacco, because little market information in regard to tobacco is available.

"Looked at from all angles, the auction-floor system of marketing tobacco is far from satisfactory and is almost entirely in the favor of the large companies. The lack of a uniform system of grading tobacco operates to the disadvantage of both buyer and seller, but particularly to the disadvantage of the small grower, whose marketing position is weak."

It is absolutely essential in the leaf tobacco industry that standard grades be established which will not only assist and educate the tobacco farmer in sorting and grading his tobacco for market, but will give the product some definite ascertainable value. Standardizing the various grades of tobacco would also place the farmer and buyer on a more equitable plane and would establish uniformity in commercial transactions and constitute a basis on which the market value of leaf tobacco could be determined with some degree of definiteness.

The Department of Agriculture, under authority of (257) the Tobacco Stocks and Standards Act, has recently issued a classification of leaf tobacco, covering classes, types and groups of grades, which, however, is primarily for statistical purposes. The Secretary of Agriculture promulgated these grades March, 1929, this classification covering, however, only the principal classes and types of domestic tobacco, as indicated in a report of that Department, as follows: "These type numbers are used for the quarterly reports of tobacco stocks required by the Act, and are used as the basis for statistical information on tobacco acreage, production, and price by types, gathered and published by the United States Department of Agriculture.

The Department of Agriculture has established 75 standard grades of flue-cured tobacco grown in the territory with which this report deals, and in cooperation with the State Departments of Agriculture of the several

(263) recommended. The Department, however, is without authority to enforce this system of grading, and legislation similar to that contained in the Cotton Standard Act should be enacted and the Secretary of Agriculture empowered to establish and enforce standards in the tobacco industry. It would likewise appear that the various tobacco growing States should enact legislation establishing within their borders the system of grades established by the Department of Agriculture, making this system compulsory at all auction warehouses. In conjunction with this plan it would be highly desirable to segregate the various grades of tobacco and instead of each individual basket of tobacco being auctioned off as it is under the present system, this tobacco should be placed in rows and auctioned or sold en bloc.

It is also highly desirable that daily market quotations be published throughout this district, quoting prices on the various grades of tobacco sold, which would afford the tobacco grower information as to the condition of the market.

It also appears to the writer that better cooperation could be established between the manufacturer and the grower as to the requirements of each of the manufacturers, thus enabling the grower to produce, in so far as possible, the particular type required by the individual manufacturer.

A cooperative marketing system is now being strongly agitated in the State of North Carolina, and from latest reports it would appear that some organization will come into being before another marketing season has passed. The provisions of the Agricultural Marketing Act should afford the tobacco grower much encouragement in this respect, and with the cooperation of the Federal Farm Board and the Department of Agriculture, a strong, effective cooperative association could be established. In the absence of a cooperative marketing association, it is strongly recommended that wherever possible the tobacco growers organize and operate under some system of collective bargaining, which, if properly organized and financed, would materially help the producer in securing a fair price for his product:

DEFENDANT'S EXHIBIT NO. 5.

(264)

Filed July 1, 1937.

BUREAU OF AGRICULTURAL ECONOMICS

SERVICE AND REGULATORY ANNOUNCEMENTS NO. 149

RULES AND REGULATIONS OF THE SECRETARY OF AGRICULTURE UNDER THE TOBACCO INSPECTION ACT

UNITED STATES DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY.

By virtue of the authority vested in the Secretary of Agriculture by the Tobacco Inspection Act, approved August 23, 1935 (49 Stat., 731), I, H. A. Wallace, Secretary of Agriculture, do prescribe and promulgate the following rules and regulations to be in force and effect on and after January 2, 1936, and until amended or superseded by rules and regulations hereafter prescribed and promulgated under said act.

In testimony whereof I have hereunto set my hand and caused the official seal of the Department of Agriculture to be affixed in the City of Washington, this the 17th day of December 1935.



H. A. Wallace
Secretary of Agriculture.

REGULATIONS OF THE SECRETARY OF AGRICULTURE UNDER THE TOBACCO INSPECTION ACT

Regulation 1. Definitions

SECTION 1. Words used in these regulations in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

Sec. 2. For the purposes of these regulations, unless the context otherwise require, the following terms shall be construed respectively to mean—

Paragraph 1. *The act.*—The Tobacco Inspection Act approved August 23, 1935. (49 Stat. 731).

Par. 2. *Secretary.*—The Secretary or Acting Secretary of Agriculture of the United States.

Par. 3. *Department.*—The United States Department of Agriculture.

Par. 4. *Bureau.*—The Bureau of Agricultural Economics of the United States Department of Agriculture.

Par. 5. *Chief of Bureau.*—Chief of Bureau of Agricultural Economics.

Par. 6. *Person.*—Individual, association, partnership, or corporation.

Par. 7. (a) *Inspector.*—Person employed, licensed, or authorized by the Secretary to determine and certify the type, grade, condition, or other characteristics of tobacco.

(b) *Sampler.*—Person employed, licensed, or authorized by the Secretary to select, tag, and seal official samples of tobacco.

(c) *Weigher.*—Person employed, licensed, or authorized by the Secretary to weigh and certify the weight of tobacco.

(d) *Appeal Inspector.*—An inspector or other person designated or authorized by the bureau to hear appeals under the act and these regulations.

Par. 8. *Tobacco.*—Tobacco in its unmanufactured forms as it appears between the time it is cured and stripped from the stalk, or primed and cured and the

States has put in operation a Federal system of grading which has met with marked success, and it is believed by the writer that this system offers in a large degree a solution of the marketing problems confronting the tobacco farmer.

July 1, 1929 a Federal appropriation became available for this work which is being extended rapidly, but as the Department has not the necessary authority to make grading compulsory at the various auction warehouses, it has not reached its highest state of development. The Department has a carefully trained group of tobacco graders who are stationed at the auction warehouses where this system is in effect, and for a small fee, usually ten cents per hundred pounds, the tobacco grower may have his tobacco inspected and graded by a government grader prior to placing it on the warehouse floor for sale. A ticket is placed on the tobacco showing it to be Federal graded, a certificate of grade being placed on the ticket by the government grader. The official grade is announced when a graded pile of tobacco is placed on auction, and when sold the name of the buyer and the buying price are placed on the ticket. A report is prepared weekly giving the average for each grade, which is posted in the warehouse. Unfortunately, the graded tobacco is not kept distinct from the ungraded, nor is it arranged in rows containing the same grade, and owing to this it is not thought that the grading system has exerted the highest benefits available under the system.

Section 2 of the Tobacco Stocks and Standards Act reads as follows:

"SEC. 2. The Secretary of Agriculture shall establish standards for the classification of tobacco. He shall specify the types and groups of grades which shall be included in the returns required by this Act. Such returns shall show the quantity of tobacco by such types and groups of grades for new and old crops separately. The Secretary of Agriculture shall prepare appropriate blanks upon which the returns shall be made, and shall, upon request, furnish copies to persons who are required by this Act to make returns."

The purpose of this Act, however, is clearly expressed in Section 7, as follows:

"SEC. 7. That the information furnished under the (258) provisions of this Act be used only for the statistical purposes for which it is supplied. No publication shall be made by the Secretary of Agriculture whereby the data furnished by any particular establishment can be identified, now shall the Secretary of Agriculture permit anyone other than the sworn employees of the Department of Agriculture to examine the individual reports."

It is the contention of the writer, however, that authority to enforce some system of U. S. Standard grading should be given the Secretary of Agriculture, at least in regard to shipments of tobacco in interstate commerce, and that the various tobacco growing States cooperate with the Department of Agriculture in adopting and enforcing the grades established by this Department in the various auction warehouses within their respective States.

The Secretary of Agriculture, under Section 6 of the Cotton Standards Act, is "authorized to establish from time to time standards for the classification of cotton, by which its quality or value may be judged or determined for commercial purposes, which shall be known as the official cotton standards of the United States * * *."

Section 2 of that Act provides:

"SEC. 2. That it shall be unlawful (a) in or in connection with any transaction or shipment in commerce made after this Act shall become effective, or (b) in any publication of a price or quotation determined in or connection with any transaction or shipment in commerce after this Act shall become effective, or (c) in any classification for the purposes of or in connection with a transaction or shipment in commerce after this Act shall become effective, for any person to indicate for any cotton a grade or other class which is of or within the official cotton standards of the United States then in effect under this Act by a name, description, or designation, or any system of names, description, or designa-

tion not used in said standards: PROVIDED, That nothing herein shall prevent a transaction otherwise lawful by actual sample or on the basis of a private type which is used in good faith and not in evasion of or substitution for said standards."

It would appear that much would be accomplished if the Secretary of Agriculture be given the same authority with respect to tobacco, which, coupled with the necessary legislative enactments on the part of the various tobacco growing States establishing United States Standards on tobacco sold within these states, would give to leaf tobacco a definite ascertainable value from a commercial standpoint and would clarify, as well as simplify, the system under which leaf tobacco is now marketed.

In the absence of cooperative organizations it would appear highly desirable that tobacco farmers should have some system of collective bargaining whereby the various grades of tobacco would be sold en bloc.

A daily system of market reports should be devised (259) giving quotations on each grade of tobacco sold on the various warehouse floors, and thus giving the tobacco farmer information as to the state of the market, affording him necessary information to which under proper methods of marketing it would seem he would be rightfully entitled. The present system of issuing reports giving the average price of tobacco on the warehouse floor is of little or no benefit to the tobacco grower, as the average price now used is the price at which all tobaccos from the highers to the lowest grades are sold on the warehouse floor, and constitutes no medium of information to the grower as to the value of any particular grade or grades that he may desire to market. As indicated earlier in this report the large tobacco companies have their own private systems of grades with which the tobacco farmer is not and can not be familiar, and as the present auction warehouse method is regarded almost entirely as being in favor of the tobacco manufacturers this information would give the grower some intelligent basis for deciding whether he has received a fair price for his product.

A government grading system would also operate to the benefit of the tobacco buyer because he would have knowledge that the tobacco had been inspected and graded by a competent grader and that the quality or grade of tobacco offered for sale is exactly as represented. It would also be a tremendous factor in teaching the tobacco grower the necessity of properly grading and sorting his tobacco before placing it on the market. It would also do away with one of the chief sources of dissatisfaction of the present system in that all tobaccos of the same grade would bring approximately the same price, whereas, under the present system, one pile of tobacco of apparently the same quality as an adjoining pile may sell for a price greatly in excess of that obtained for the former. A government grading system would cure most of the defects inherent in the present system and would substitute therefor "an impartial, disinterested and authentic determination of quality."

The benefits to be derived from government grading have been summarized as follows:

"The service is educational in that it promotes more intelligent handling of the tobacco previous to sale; improved handling works to the advantage of those who buy the tobacco thus enhancing prices paid to growers; the Federal grade marks reduce the wide fluctuations in price, which is another way of saying that prices tend to become stabilized, and that, in turn, means fewer unjustly low prices and fewer dissatisfied growers.

"Above all, the grading service supplies a universal language for quality and, practically speaking, places the grower on even terms with the buyer, in so far as a knowledge of quality is concerned. In all these respects the tobacco grading service represents a distinct advance in the technic of tobacco marketing."

The Department of Agriculture also sets out the advantages to be derived from the application of standard grades to Maryland tobacco, where conditions, however, are somewhat different from the flue-cured district, al- (260) though the advantages set out below apply with equal force and effect to the flue-cured district:

"(1) Bring about a more uniform market for tobacco of like quality, color, and length.

"(2) Encourage growers in the production of better quality tobacco.

"(3) Give the growers a more definite basis for assorting tobacco and demonstrate the value of proper assorting.

"(4) Enable the growers to become familiar with the grades that are in most demand so they can plan to produce tobacco that will meet market requirements.

"(5) Promote a closer cooperation and better understanding between the growers, commission men, and buyers.

"(6) Enable buyers and manufacturers to secure a more uniform packing of tobacco as the result of more careful assorting by the growers.

"(7) Give to the tobacco trade generally a common language which will facilitate the transaction of business."

CONCLUSIONS

In the opinion of the writer, from careful observation and analysis of the facts contained in this report, there have been a number of contributing factors that have brought about the present unsatisfactory conditions in the flue-cured district, among which may be mentioned the following:

(1) Overproduction.

(2) Lack of proper grading.

(3) The present unsatisfactory and antiquated system of marketing tobacco by the auction warehouse method.

(4) Lack of a standardized system of grading, whereby the commercial value of leaf tobacco may be established.

(5) Lack of market reports affording the grower essential information as to prices and grades.

(6) Lack of cooperation between the manufacturer and grower as to the types of tobacco necessary to meet the requirements of the individual manufacturer.

These are the principal factors involved, and as long (261) as this present system of auction markets continues there is not much occasion for the large buyers of tobacco to enter into a price fixing agreement. In other words, the buyers now have every advantage and when overproduction is so prevalent the likelihood of agreements on price is rather remote. The tobacco buyer, of course, is an expert in his line. He operates under a system of grades established and enforced by the principal whom he represents, and the lack of this knowledge on the part of the grower places him at a serious disadvantage, as he has no means of knowing the desirability or value of this tobacco to the individual manufacturer.

The writer is inclined to condemn in no uncertain terms the present auction warehouse system of selling tobacco and considers it to be one of the principal contributing factors to the unsatisfactory conditions in the flue-cured tobacco district. These conditions have been set out quite fully in this report, and a further discussion is deemed unnecessary.

By reference to the table on page 12 of this report it will be seen that the stocks of tobacco have been constantly increasing since 1926, in which year the production of flue-cured tobacco was approximately 10,000,000 pounds greater than the disappearance. In 1927 production greatly exceeded disappearance and the total supply on hand increased tremendously. In the years 1928 and 1929 production greatly exceeded the disappearance of tobacco, with the consequence that the total supply on hand has constantly increased, and it is estimated that the total supply this season, based on crop conditions as of September 1st, and stocks on hand July 1st, is 1,373.0 million pounds, compared with 1,340.7 million pounds in 1929. It is also estimated that for the current season acreage for flue-cured types of

tobacco is $3\frac{1}{2}$ per cent larger than 1929, production being indicated as of September 1st, to be 772.7 million pounds, compared with a crop of 750.7 million pounds in 1929. Statistics also show that on July 1, 1930, the stocks of old leaf in the hands of dealers and manufacturers amounted to 599.3 million pounds, compared with 590.0 million pounds a year earlier. This constant increase in the supply of tobacco must necessarily have some effect on the price obtained for leaf, and the law of supply and demand exists in this industry just as in others.

The prices obtained for leaf tobacco in the flue-cured district this season are much below those obtained in the 1929 season, and a year of overproduction and low prices is usually followed by a material decrease in acreage the following year, with a consequent reduction in production, with the result that the next season's crop brings a better price. However, the writer is not one of those who is inclined to preach reduction in acreage to any set of farmers, because he realizes the utter futility of it, unless there is some method of enforcing reduction. Under our form of government this, of course, can not be done, and while some efforts have been made to bring about this result through the operation of cooperative associations, yet the writer cannot see where much can be accomplished by a voluntary agreement to reduce tobacco acreage.

The State-Federal Department of Agriculture at (262) Raleigh, in its bulletin issued at the close of the 1929 season, warned the farmers that reports on hand indicated there would be a large increase in acreage, which indicated a ruinous overproduction during 1930, at the same time calling the attention of those interested to the fact that at the close of the North Carolina sales season the largest carry-over of flue-cured tobacco in the history of the world was indicated.

The one crop system of farming, while not previously discussed in this report, is also regarded as a contributing factor to the condition in which many of the tobacco farmers find themselves. Under this system tobacco is the cash crop and every reliance is placed on this crop to produce the necessary financial returns with which

to meet the financial obligations of the grower, as well as to provide him with the necessary funds to meet his living expenses. Diversification, therefore, is one method by which the farmer can help himself and any system of farming whereby the farmer depends on the returns from one crop to meet all his expenses is bound to be ruinous at times, and the farmer is faced with the urgent necessity of so organizing his farming that he has some means of providing himself with the necessities of life independent, to some extent, of the main crop upon which he relies for his cash return.

The tobacco farmer in North Carolina, particularly in the Old Belt where tobacco has been grown for generations, is fairly well informed as to methods of growing, curing, grading, etc., and on the whole markets his tobacco properly graded, based on his experience with the particular types of tobacco he has grown. In the State of Georgia, however, where tobacco has been grown only within the last ten or a dozen years, the farmer has not yet become sufficiently educated as to methods of curing and grading, and markets his tobacco at times improperly cured and improperly graded and sorted, with the result that he constantly penalizes himself. It is necessary for the manufacturer to re-assort tobacco which has not been properly graded and sorted, the cost of which necessarily must be taken into consideration when the tobacco is purchased. All these factors work to the detriment of the grower and it would appear that an extensive educational campaign should be carried on in this state to teach the farmer proper methods of curing and sorting.

The marketing season in this State is entirely too short opening as it does shortly after harvesting is completed and running for four or five weeks, which does not give the grower sufficient time in which to handle his tobacco.

The present system of government grading established at a number of warehouses in the flue-cured district is probably the most progressive step taken in this industry within the last fifty years, and warrants the support and encouragement of the producer and manufacturer alike. The Department of Agriculture has not received the credit due it for the organization of this work, and general adoption of this system is highly

time it enters a manufacturing process. Conditioning, sweating, and stemming are not regarded as manufacturing processes.

Par. 9. Official standards.—Standard grades of tobacco promulgated by the Secretary under the act.

Par. 10. Tentative standards.—Grades of tobacco authorized by the Chief of Bureau to be used pending promulgation by the Secretary.

Par. 11. Office of inspection.—A field office of the tobacco inspection service of the Bureau.

Par. 12. Certificate.—A certificate issued under the act and these regulations.

Par. 13. Interested party.—The owner or other financially interested person, including the warehouseman, commission merchant, association, and other person who has the tobacco in his custody for sale; the authorized agent of the owner; and persons to whom or by whom the tobacco has been sold on the basis of a certificate issued, or sample prepared, under the act, but not including a person who is negotiating for its purchase.

Par. 14. Regulations.—Rules and regulations of the Secretary under the act.

Par. 15. Package.—A hogshead, tierce, case, bale, or other securely enclosed parcel or bundle.

Par. 16. Lot.—A pile, basket, bulk, package, or other definite unit.

Par. 17. Identification number.—A number or a combination of letters and numbers in a design or mark approved by the Chief of Bureau, stamped, printed, or stencilled on a lot of tobacco or attached thereto by an inspector, sampler, or weigher for the purpose of identifying the lot covered by a certificate issued under the act.

Par. 18. Official sample.—A sample selected, tagged, and sealed by an inspector or sampler under the act.

Par. 19. Sample seal.—A seal approved by the Chief of Bureau for sealing official samples.

Par. 20. Lot seal.—A seal approved by the Chief of Bureau for sealing lots of tobacco certificated under the act.

Par. 21. Auction market.—A place to which tobacco is delivered by the producers thereof, or their agents, for sale at auction through a warehouseman or commission merchant.

Par. 22. Designated market.—An auction market designated by the Secretary, under section 5 of the act.

Par. 23. Public notice.—A proclamation by the Secretary under the act (a) stating that an auction market is designated under the act; (b) giving notice of such fact; (c) specifying a date when the requirement of inspection and certification under the act shall become effective; and (d) released to the press, mailed to the tobacco board of trade or warehouse association of such market, and mailed to the postmaster at such market for posting.

Par. 24. Permissive inspection.—Inspection authorized under section 6 of the act.

Par. 25. Mandatory inspection.—Inspection authorized or required under section 5 of the act.

Regulation 2. Administration

SECTION 1. The Chief of Bureau is charged with the supervision of the performance of all duties arising in the administration of the act.

Regulation 3. Permissive Inspection

SECTION 1. Permissive inspection.—Permissive inspection consists of inspecting, including sampling and weighing, and certificating tobacco upon the request of an interested party. Upon such request the Chief of Bureau may authorize and require an inspector, as a part of his duties, to supervise the preparation of tobacco to be inspected under the act, including the sorting, handling, conditioning, or packing of such tobacco.

Sec. 2. Paragraph 1. (a) Where inspection is offered.—Tobacco may be inspected, sampled, or weighed for the purposes of the act, upon request of an interested party, at points indicated in parts (b), (c), and (d) of this section whenever official inspectors, samplers, or weighers are available and the tobacco is offered under conditions that permit of its proper examination.

(b) Shipping points.—Points at which tobacco enters, or is offered for, interstate or foreign shipment, including packing houses, prizeeries, warehouses, and other places where tobacco is handled, packed, or stored.

(c) *Official stations.*—The stations or the headquarters of inspectors, samplers, or weighers. An official station may be any town, city, or place having a market, receiving station, or other facilities for handling, packing, or storing tobacco and where there is a sufficient volume of work to justify the stationing of an inspector, sampler, or weigher.

(d) *Other points.*—Points near an official station, to the extent permitted by the time of the inspector, sampler, or weigher at such official station.

Par. 2. Who may obtain inspection.—Inspection, sampling, or weighing as described in section 1 of this regulation may be requested by an interested party, or his authorized agent, by filing an application in accordance with paragraphs 3 and 4 of this section.

Par. 3. How to make application.—Application for inspection, sampling, or weighing of tobacco shall be made to the Bureau, the office of inspection, or as the case may be, to an official inspector, sampler, or weigher. It may be made orally or in writing and delivered in person, by mail, by telegraph, or otherwise. If made orally, the Bureau or the official receiving it may require a written confirmation.

Par. 4. Form of application.—Application for inspection, sampling, or weighing tobacco shall include the following information: (a) The date of the application; (b) the designation of the tobacco and the crop year of its production; (c) the name and post-office address of the applicant and of the person, if any, making the application as agent; (d) the financial interest of the applicant in the tobacco; (e) the exact nature of the service desired as (1) inspection, (2) inspection and sealing, (3) sampling, or (4) weighing; (f) a statement that the tobacco (1) is in commerce, as defined in the act, or (2) is to be inspected, sampled, or weighed in connection with its entering such commerce; (g) if the tobacco has been officially inspected, sampled, or weighed previously, the application must have the previous certificate attached, or show with respect to such previous service (1) by whom, (2) the date, (3) previous determinations as certificated; (h) the reason for requesting reinspection, resampling, or reweighing; and (i) such other necessary information as the Chief of Bureau may require.

Par. 5. When application deemed filed.—An application shall be deemed filed when delivered to the Bureau, the office of inspection, or according to the nature of the service requested, to an official inspector, sampler, or weigher. When an application is filed, the date and time of filing shall be recorded by the official receiving it.

Par. 6. When application may be rejected.—An application may be rejected (1) for noncompliance with the act or these regulations, or (2) when it is not practicable to provide the service. All expenses incurred in connection with an application rejected for noncompliance with the act or these regulations shall be paid by the applicant as provided in regulation 7, section 1, paragraph 4.

Par. 7. When application may be withdrawn.—An application may be withdrawn at any time before the requested service is rendered upon payment of expenses incurred in connection therewith as provided in regulation 7, section 1, paragraph 4.

Par. 8. Authority of agent.—Proof of authority of any person making an application as agent may be required in the discretion of the official receiving the application.

Par. 9. Accessibility of tobacco.—All tobacco to be inspected, sampled, or weighed upon application shall be made accessible by the applicant for proper examination, including any necessary display in proper light for determination of grade or other characteristics or for drawing of samples. In the case of tobacco in packages, the coverings shall be removed by the applicant in such manner as may be prescribed by the inspector, sampler, or weigher.

Par. 10. (a) Certificates.—Each certificate issued under this regulation shall (1) show that it was issued under the Tobacco Inspection Act; (2) be in a form approved for the purpose by the Chief of Bureau; and (3) embody within its written or printed terms, with respect to the particular kind of service, all applicable information required by parts (b), (c), (d), (e), and (f) of this paragraph. Each certificate may also contain any information, not inconsistent with the act and these regulations, as may be approved or required by the Chief of Bureau. The Chief of Bureau may, in his discretion, specify or limit the period in which a certificate shall be valid.

(b) *Inspection certificate.*—Each inspection certificate shall show (1) the caption "Tobacco Inspection Certificate"; (2) whether it is an original, first, second, or other copy; (3) the number of the certificate; (4) the identification

number and private identification marks on the lot; (5) the date and number of the official sample, if any; (6) the location of the tobacco at the time of inspection or sampling; (7) the date of inspection; (8) the type and grade of the tobacco; (9) the kind of lot or package; and (10) the signature of the official inspector; also such additional information as may be required by the Chief of Bureau. An inspection certificate covering a package of tobacco shall also show the form and condition of the tobacco.

(c) *Sample inspection certificate.*—Each sample inspection certificate shall carry the caption "Tobacco Sample Inspection Certificate" and shall otherwise comply with the requirements of an inspection certificate, and in addition include a clearly worded statement that the type, grade, or other tobacco characteristics shown therein, apply only to the tobacco contained in the sample inspected.

(d) *Weight certificate.*—Each weight certificate shall show (1) the caption "Tobacco Weight Certificate"; (2) whether it is an original, first, second or other copy; (3) the number of the certificate; (4) the identification number or private identification marks on the lot; (5) the location of the tobacco at the time of weighing; (6) the date of weighing; (7) the weight of each lot; (8) the kind of lot or package; and (9) the signature of the official weigher.

(e) *Official sample tag.*—Each official sample drawn and prepared shall have attached thereto, a certificate or tag showing (1) the caption "Official Tobacco Sample"; (2) the date of sampling; (3) the location of the tobacco at the time of sampling; (4) the kind of lot or package; (5) the condition of the tobacco; (6) the identification number and private identification marks on the lot; and (7) when a lot is found to be damaged, nested, or in doubtful keeping order, a statement of such fact.

(f) *Combination certificate.*—A combination certificate of inspection and weight may be issued under the act, if such certificate carries the caption "Tobacco Inspection and Weight Certificate" and otherwise meets all of the requirements of parts (b) and (d) of this paragraph.

Par. 11. Disposition of certificates.—When a certificate of inspection or weight is issued under the act upon the request of an interested party, the original certificate and two copies shall be delivered or mailed to the applicant or a person designated by him, and one copy shall be mailed or delivered to the Bureau or local office of inspection. Charges may be made for additional copies furnished the interested party upon request as provided in regulation 7, section 4.

Par. 12. Advance information.—Upon the request of an applicant for whom tobacco has been inspected, sampled, or weighed and certificated under the act, all or any part of the contents of such certificate may be telegraphed or telephoned to him at his expense. Information relative to grade or other determinations contained or to be contained in a certificate shall not be divulged by an inspector, sampler, or weigher to any person other than an interested party or his agent without the approval of the Chief of Bureau, and such information shall not be furnished an interested party before the certificate is issued.

Par. 13. Weighing apparatus.—A scale used for determination of weight to be certificated under the act shall be subject to examination for accuracy according to the regulations of the State or municipality in which located. No disapproved scale shall be used to determine weight of tobacco for the purpose of the act and these regulations.

Regulation 4. Mandatory Inspection

SECTION 1. Mandatory inspection.—Mandatory inspection consists of inspecting and certifying tobacco under the act on designated markets before it is offered for sale at auction and the announcement of certified grades in the auction.

SEC. 2. Where mandatory inspection is required.—All tobacco offered for sale at auction on a market designated in accordance with the act and section 1 of this regulation shall be inspected and certificated under the act upon the date specified by the Secretary in public notice of such designation, and thereafter, except when the requirement of such inspection and certification is temporarily suspended by the Chief of Bureau in accordance with the act and these regulations.

SEC. 3. Designation of markets.—An auction market where tobacco is bought or sold thereon at auction or the products customarily manufactured therefrom

move in commerce may be designated under the act by the Secretary after the Chief of Bureau has advised the Secretary that two-thirds of the growers voting in the referendum held in accordance with section 4 of this regulation favored the designation of such market. When a market is designated by the Secretary, he shall give public notice of the fact and in such public notice he shall specify the date on which the requirement of inspection and certification of tobacco sold at auction on such market shall become effective. The Chief of Bureau may temporarily suspend the requirement of inspection and certification on a designated market when it is found impracticable to provide such service because competent inspectors are not obtainable or because the quantity of tobacco available for inspection is insufficient to justify the cost of such service.

Sec. 4. Growers' referendum—Paragraph 1. Method of conducting.—Any referendum held as provided in section 5 of the act shall be conducted by the Bureau in accordance with this section. The Chief of Bureau shall determine (a) the market or group of markets to be covered by a referendum; (b) when a referendum is to be held; and (c) the period during which growers, entitled to vote therein, may cast their ballots. When a referendum is held for a group of markets, the result of such referendum may be construed to apply either individually or collectively to such markets. Before holding a referendum, the Bureau shall establish from the records of the collectors of internal revenue for the preceding marketing season a list showing the names of all growers who are entitled to vote in the referendum, and from the list so established the eligibility of growers to vote in a referendum shall be determined by the Bureau: *Provided*, That if a grower, whose name appears on such lists for two or more markets selling the same class of tobacco, votes in one referendum for a market selling such class, he shall not be eligible to vote in a referendum for any other market selling such class.

Par. 2. Form of ballot.—Ballots to be used for voting in a referendum held under the act shall be in a form approved for the purpose by the Chief of Bureau.

Par. 3. Distribution of ballots.—Ballots to be used by growers in a referendum under the act may be distributed by mail or through representatives of the Bureau as the Chief of Bureau may select. The Chief of Bureau may establish and publish a list of voting places for the purpose of any referendum and distribute ballots therefrom. When ballots are not mailed directly to growers who are entitled to vote, insofar as their addresses are known, the Chief of Bureau shall announce the voting places at which ballots can be secured, and copies of such announcement shall be given to the press and mailed, for posting and distribution, to the post offices of the market or group of markets covered by the referendum and to post offices in the vicinity of such markets or group of markets. Any explanatory statement with reference to a referendum, provisions of the act and these regulations, or the operation and benefits of the services authorized by the act may be attached to or supplied with ballots.

Par. 4. Filing and tabulation of votes.—Each ballot, when filled in and signed by a grower entitled to vote in a referendum, shall be mailed or delivered by him as specified in the ballot. Persons authorized by the Chief of Bureau to receive votes in any referendum shall promptly file all votes received or collected by them with the Bureau. All ballots filed in a referendum shall be examined to verify the eligibility of the voter and the Chief of Bureau shall have compiled the result of the referendum and furnish the Secretary a statement showing whether or not two-thirds of the growers voting favored the designation of the market or group of markets covered by the referendum. In verifying votes, ballots which do not show the desire of the voter, or ballots which are defective or illegible, or ballots on which the signature or other identification does not correspond with the list established from the records of the collectors of internal revenue shall not be counted. The choice of any individual voter shall not be divulged by any official of the Bureau, except to the Secretary when requested. Votes, ballots, and other documents pertaining to a referendum shall be preserved in the Bureau for a period of 2 years from the closing date of such referendum, and may be destroyed thereafter.

Sec. 5. Accessibility of tobacco.—All tobacco subject to mandatory inspection on a designated market shall be made readily accessible for inspection.

Sec. 6. Mandatory inspection ticket.—A mandatory inspection ticket shall consist of an inspection certificate made and issued in combination with an auction warehouse ticket in a form approved by the Chief of Bureau.

Sec. 7. Warehousemen to provide tickets.—A mandatory inspection ticket, in the form required by section 6 of this regulation, shall be provided by each auction warehouseman on a designated market to cover each lot of tobacco offered for sale at auction by him on such market.

Sec. 8. Changes or alterations.—No change or alteration shall be made, in the weight or other identification of the lot, on a mandatory inspection ticket after the certification of type and grade by an official inspector, and any such change or alteration shall constitute and be construed as a change or alteration in the certificate issued or authorized under the act.

Sec. 9. Disposition of ticket.—One copy of the mandatory inspection ticket shall be attached to, or placed on, the tobacco certificated as a further identification of the lot and all copies of such ticket shall become null and void when such identifying copy is removed from the lot. One copy of each ticket, showing (1) the certification of type and grade; (2) the weight and other identification; and (3) the details of the sale at auction, shall be delivered by the warehouseman to the Bureau or the local head inspector.

Sec. 10. Announcing grades.—The grade of each lot of tobacco as certified by an official inspector on a designated market shall be clearly announced at the time the lot is offered in the auction.

Regulation 5. Appeal

Section 1. When appeal may be taken.—Whenever an interested party believes that a certificate issued or a sample prepared under the act is not correct he may file an appeal: *Provided*, That (a) the period for which such certificate was issued or sample was prepared, if any specified, has not expired; (b) all tobacco covered by such certificate or sample is accessible to an appeal inspector for making a proper reinspection, resampling, or reweighing, and can be definitely identified by him as the tobacco covered by such certificate or sample; and (c) the tobacco has not deteriorated or undergone any material change.

Sec. 2. How to obtain an appeal.—An appeal shall be made in writing, and filed with the Bureau or the office of inspection for the type of tobacco involved. Such appeal shall show: (a) the date; (b) the name and post office address of the appellant and of the person, if any, making the appeal in his behalf; (c) the financial interest of the appellant in the tobacco; (d) the reasons for making the appeal; and such other information as may be required by the Chief of Bureau. The appeal shall be accompanied by the certificate or sample from which the appeal is taken, unless such requirement is waived by the Bureau when it is impracticable for the appellant to furnish such certificate. The appeal inspector may require the appellant to furnish any other relevant and necessary information for the proper consideration of the appeal.

Sec. 3. Record of filing time.—When an appeal is filed, the date and time of filing shall be recorded by the officer receiving it.

Sec. 4. When appeal may be refused.—If it shall appear that the reasons stated in an appeal are frivolous or unsubstantial or that the act or these regulations have not been complied with, the appeal may be denied or dismissed. When an appeal is denied or dismissed, the appeal inspector shall (a) notify the appellant by telegraph or in writing giving the reason for such denial or dismissal; (b) mail a copy of such notification to the Bureau; and (c) return or release to the appellant, or other person designated by him, any certificate or sample which was filed with the appeal. All expenses incurred in connection with an appeal prior to its refusal or dismissal shall be paid by the appellant, as provided in regulation 7, section 2, paragraph 2.

Sec. 5. When appeal may be withdrawn.—An appeal may be withdrawn by the appellant at any time before an appeal certificate is issued or an appeal sample is prepared, upon the payment of any expenses incurred in connection with the appeal as provided in regulation 7, section 2, paragraph 2.

Sec. 6. Review or second inspection not an appeal.—A review or investigation made in accordance with regulation 8, section 3, or a second inspection, sampling, or weighing made upon the request of an interested party for the purpose of securing new or later information when the correctness of an old certificate or sample is not questioned, shall not be considered an appeal.

Sec. 7. Order in which made.—Appeals shall be heard and passed upon, so far as practicable, in the order in which they are filed.

Sec. 8. Who shall pass upon appeals.—Appeals shall be passed upon by an appeal inspector designated for the purpose by the Chief of Bureau. When

authorized, by the Chief of Bureau, two or more appeal inspectors may jointly pass upon an appeal. The Bureau may authorize an inspector, supervising inspector, or other person to act as an appeal inspector, but no appeal inspector shall pass upon an appeal involving the correctness of a certificate issued or sample prepared by him.

Sec. 9. Appeal findings.—Immediately after an appeal has been heard and the tobacco involved therein has been reexamined, an appeal certificate shall be issued or an appeal sample prepared by the appeal inspector. Such certificate or sample shall show the finding of the appeal inspector and shall be labeled "Appeal Certificate" or "Appeal Sample", as the case may be, over the signature of the appeal inspector. An appeal certificate or sample shall supersede all other certificates or samples for the same lot of tobacco and shall refer specifically to the certificate or sample from which the appeal was made. In all other respects the provisions of these regulations relative to certificates or samples shall apply to an appeal certificate or sample. The findings of the appeal inspector as certificated shall be final, unless the Chief of Bureau shall direct a review of such findings.

Sec. 10. Superseded certificate or sample.—When superseded under these regulations by an appeal certificate or an appeal sample, such superseded certificate or sample shall become null and void and shall not thereafter be used to represent the tobacco described therein. If the original and the copies of the old certificate were not delivered to the appeal inspector for cancellation, the appeal inspector shall notify such persons or firms as he may consider necessary to prevent fraudulent use of any such null and void certificate.

Regulation 6. Inspectors, Samplers, and Weighers

SECTION 1. Who may be employed, licensed, or authorized.—Any person who is not financially interested directly or indirectly in merchandising tobacco, except as a grower or except in disposing of tobacco previously acquired, and who has demonstrated his competency may be employed, licensed, or authorized to inspect, sample, or weigh tobacco. Licenses issued by the Secretary shall be countersigned by a supervising official of the Bureau. Licenses to inspect or to sample shall specify the type or types of tobacco which the licensee is authorized to inspect or sample.

Sec. 2. Order of providing service.—When tobacco is to be inspected, sampled, or weighed upon request, such services shall be rendered as far as practicable in the order in which applications were received. In conducting mandatory inspection, the inspection shall start at the beginning of the "break" in the auction warehouse where the sale is scheduled to start and the inspection shall continue in the order of sale on each warehouse floor and from warehouse to warehouse.

Sec. 3. Certificate issuance.—A certificate shall be issued as soon as practicable after any tobacco has been inspected or weighed for the purpose of the act. A separate certificate shall be issued for each lot of tobacco inspected or weighed, except when a certificate covering two or more lots is specifically authorized by the Chief of Bureau. In case of a lost or destroyed certificate, a duplicate thereof may be issued under the same number, date, and name by an authorized supervising official. Any such duplicate certificate shall be plainly marked "Duplicate" above the signature of the supervising official who issued it.

Sec. 4. Inspection determinations.—The determination of type, grade, size, form, condition, or other tobacco characteristics shall be based upon a thorough examination of the lot of tobacco to be certificated or an official sample of such lot. The certification of a lot of tobacco shall be a true representation of the lot, or of the official sample, at the time of inspection.

Sec. 5. Method of sampling.—In sampling tobacco under the act, at least three breaks shall be made at different points in the lot, and in the discretion of the sampler as many more breaks shall be made as seem necessary to show the range of the entire lot. From the breaks so made tobacco to be used the official sample shall be selected. The official sample shall, so far as practicable, include tobacco of each quality, color, length, and other characteristics found in the lot in such proportions as would truly represent the lot. In case a lot is found to be damaged, nested, or in doubtful keeping order, the official sample tag shall be so marked. Official sample tags shall be attached to the sample, in a manner prescribed by the Chief of Bureau, and shall be

sealed thereon with an official sample seal approved for the purpose by the Chief of Bureau.

Sec. 6. Weight determinations.—Daily before weighing any tobacco for the purposes of the act, a weigher shall verify the accuracy of the scales to be used by him. Except as may be otherwise specified by the Chief of Bureau, all weights certificated shall be within an accuracy of 1 pound.

Sec. 7. Proper light.—Tobacco shall not be inspected or sampled for the purposes of the act except when displayed in proper light for correct determination of grade or other characteristics of tobacco. No tobacco shall be inspected or sampled for the purposes of the act in the direct rays of the sun or by any artificial light which does not permit the inspector correctly to determine the grade or other characteristics of tobacco.

Sec. 8. Suspension and termination.—The license of an inspector, sampler, or weigher may be suspended, pending final action by the Secretary, by any official authorized to countersign licenses whenever he considers such action to be for the best interest of the service. The designation of an appeal inspector may be withdrawn at any time by the Bureau. Before the license of an inspector, sampler, or weigher is terminated or revoked pursuant to the act and these regulations, such appointee or licensee shall be furnished by the Secretary, or his designated representative, with a written statement specifying the charges, and within 7 days after his suspension, the licensee may file an appeal in writing with the Secretary supported by any evidence he may wish to offer in connection therewith.

Regulation 7. Fees and Charges

SECTION 1. Fees or charges for permissive inspection performed under the act shall be fixed and paid in accordance with this regulation.

Paragraph 1. For inspection.—Fees or charges for inspecting, sampling, weighing, or sealing, upon the request of any interested party, shall be fixed by the Chief of Bureau, in accordance with paragraphs 2, 3, and 4 of this section and in amounts which are deemed reasonable under the circumstances.

Par. 2. Under cooperative agreement.—Fees or charges for inspecting, sampling, weighing, or sealing, and supervision in connection therewith, under a cooperative agreement with other branches of the Government, State agencies, or other organizations or persons shall be in accordance with such agreement.

Par. 3. Direct service.—Fees or charges for inspecting, sampling, weighing, or sealing, when done independently by the Bureau, shall be fixed according to the nature of the service and the conditions under which the service is rendered. Charges may, in addition to a fee, include the expenses of the inspector, sampler, or weigher for travel and subsistence and other necessary expenses involved in rendering the service requested.

Par. 4. When application rejected or withdrawn.—When an application for inspection, sampling, or weighing is rejected in accordance with regulation 3, section 2, paragraph 6, or withdrawn in accordance with regulation 3, section 2, paragraph 7, the applicant may be required to pay a reasonable charge for the time used by an inspector, sampler, or weigher and other expenses incurred in connection with such application prior to its rejection or withdrawal.

Sec. 2. Paragraph 1. For appeals.—A charge of \$1 shall be made for each appeal filed under regulation 5 and the fee for an appeal inspection, sampling, or weighing shall equal the fee for the original inspection, sampling, or weighing from which the appeal is taken, plus any charges for travel or other expenses incurred in hearing the appeal: *Provided*, That when a material error in the certificate or sample from which the appeal is taken is found by the appeal inspector, the charge and fee shall be waived.

Par. 2. When appeal refused or withdrawn.—When an appeal is refused in accordance with regulation 5, section 4, or withdrawn in accordance with regulation 5, section 5, the appellant may be required to pay a reasonable charge for the time used by the appeal inspector and other expenses incurred in connection with such appeal prior to its denial, dismissal, or withdrawal.

Sec. 3. For demonstrations.—Charges, not in excess of the cost thereof, as may be approved by the Chief of Bureau, may be made for demonstrations or samples when such demonstrations or samples are furnished upon request.

Sec. 4. For certificates.—A charge may be made, in the discretion of the Chief of Bureau, for copies of certificates other than those required to be

distributed in regulation 3, section 2, paragraph 11, and for the issuance of a duplicate certificate in accordance with regulation 6, section 3.

Sec. 5. Payment of, how made.—Fees and charges fixed in accordance with this regulation shall be paid by the applicant or person obtaining the service in accordance with the statement rendered by the Bureau. A deposit to cover all, or a part of, fees and charges for services to be rendered may be required by the Bureau. Fees for services rendered independently by the Bureau, shall be remitted by check or draft made payable to the United States Department of Agriculture.

Regulation 8. Miscellaneous

Section 1. Publications.—Publications under the act and these regulations shall be made in service and regulatory announcements of the Bureau and such other mediums as the Chief of Bureau may from time to time designate for the purpose.

Sec. 2. Political activity.—Persons employed, licensed, or authorized under the act are forbidden, during the period of their appointment, license, or authorization, to take any active part in political management or in political campaigns. Political activity in city, county, State, or national election, whether primary or regular, or in behalf of any party or candidate is prohibited. This applies to all appointees, including temporary and cooperative employees, and employees on leave of absence with or without pay. Willful violation of this section will constitute grounds for terminating or withdrawing an appointment, license, or authorization.

Sec. 3. Bureau investigations.—An inspector, sampler, or weigher, when authorized by the Bureau, may of his own initiative, or upon the request of an interested party, review for the purpose of verification or confirmation any tobacco which he has certificated, and any supervising official may review the work of any inspector, sampler, or weigher: *Provided*, That such review shall not be made if the ownership of the tobacco involved has changed since the date of certification, unless there is intimation or evidence of deterioration or of irregularities or fraud in connection with the certification or sampling. When such review discloses an error in the certification, the inspector, sampler, or weigher concerned, or supervising official shall immediately correct the error by making an appropriate change in the certificate or by canceling the certificate and issuing a new certificate in lieu thereof. Any correction made on a certificate shall be initialed by the issuing official or by the supervising official. When a new certificate is issued for a lot of tobacco, the old certificate and copies thereof shall become null and void and shall not thereafter be used to represent the tobacco described therein.

Sec. 4. Identification number.—The Chief of Bureau may require the use of official identification numbers in connection with tobacco certificated or sampled under the act. When identification numbers are required, they shall be specified by the Chief of Bureau and shall be attached to, or stamped, printed, or stenciled on, the lots of tobacco certificated or sampled, in a manner specified by the Chief of Bureau.

DEFENDANT'S EXHIBIT NO. 6.

(273)

Filed July 1, 1937.

United States Department of Agriculture

BUREAU OF AGRICULTURAL ECONOMICS

SERVICE AND REGULATORY ANNOUNCEMENTS NO. 113

CLASSIFICATION OF LEAF TOBACCO COVERING CLASSES, TYPES, AND GROUPS OF GRADES

Issued under authority of THE TOBACCO STOCKS AND STANDARDS ACT

(Public, No. 561, 70th Cong.)

This classification of leaf tobacco has been developed to enable the Secretary of Agriculture to carry out the provisions of an act of Congress approved January 14, 1929 (Public, No. 561, 70th Cong.). For convenience in administration this act is referred to as the tobacco stocks and standards act. Section 2 of the act states: "The Secretary of Agriculture shall establish standards for the classification of tobacco. He shall specify the types and groups of grades which shall be included in the returns required by this act."

In March, 1929, the Secretary of Agriculture officially promulgated, under authority of the said act, a classification of leaf tobacco. This classification covered only the principal classes and types of American-grown tobacco, and provided a number by which each of the different classes and types could be identified. These type numbers are used for the quarterly reports of tobacco stocks required by the act, and are used as the basis for statistical information on tobacco acreage, production, and prices by types, gathered and published by the United States Department of Agriculture.

All types of domestic-grown tobacco that have an annual production of less than 1,000,000 pounds are treated as "miscellaneous domestic," and tobacco produced in foreign countries is classified as "foreign." To the classes and types promulgated in March, 1929, there are now added class and type designations for "miscellaneous domestic" and "foreign." As in the original classification, no attempt has been made to give all of the various names by which a type may be locally known or all of the sections in which it is produced.

The act also requires the division of each type of tobacco into a limited number of broad divisions known as "groups" or "groups of grades." The principal purpose of this revision of the classification of leaf tobacco, therefore, is to establish definite group divisions for the several types. Within the past eight years tentative standard grades have been prepared for 21 of the 26 important types; and for each of these types, group divisions were tentatively established as the basis of the grades. These groups have been used extensively, as they form the first factor of the standard tobacco grades that are used under the United States warehouse act, by State and commercial agencies, and for the purposes of the Federal-State tobacco-grading service.

Two public hearings were held in Washington on the proposed classification of leaf tobacco at which the several type and group divisions were discussed with leading members of the tobacco trade. Interviews have been held with a large number of tobacco farmers, dealers, manufacturers, and others in order to have the benefit of their criticisms and suggestions. As a result of these hearings and interviews, two of the lower groups of grades, X and Y, as shown in the proposed Classification of Leaf Tobacco issued in February, 1929, have been combined into what will hereafter be known as Group X, the definition of which will be found under each type described herein.

A copy of the tobacco stocks and standards act of January 14, 1929, under which authority this classification is issued, appears on page 17.

DEFINITIONS OF TERMS USED IN CLASSIFICATION OF LEAF TOBACCO

For the purpose of this classification of leaf tobacco, the following terms shall be construed, respectively, to mean:

Leaf tobacco.—Tobacco in the forms in which it appears between the time it is cured and stripped from the stalk, or primed and cured, and the time it enters into the different manufacturing processes. The acts of stemming, sweating or fermenting, and conditioning are not regarded as manufacturing processes. Leaf tobacco does not include any manufactured or semimanufactured tobacco, stems which have been removed from leaves, cuttings, clippings, trimmings, shorts, or dust.

Unstemmed.—A form of leaf tobacco consisting of a collection of leaves from which the stems or midribs have not been removed, including leaf scrap.

Stemmed.—A form of leaf tobacco consisting of a collection of leaves from which the stems or midribs have been removed, including strip scrap.

Class.—One of the major divisions of leaf tobacco based on the distinct characteristics of the tobacco caused by differences in varieties, soil, and climatic conditions, and the methods of cultivation, harvesting, and curing.

Type.—A subdivision of a class of leaf tobacco, having certain common characteristics which permit of its being divided into a number of related grades. Any tobacco that has the same characteristics and corresponding qualities, colors, and lengths, shall be treated as one type, regardless of any factors of historical or geographical nature which can not be determined by an examination of the tobacco.

Group.—A group of grades, or a division of a type covering several closely related grades, based on the general quality of the tobacco, including the percentage of injury, and other factors. The factors that determine the group divisions also largely determine the usage or suitability of tobacco for certain purposes.

Scrap.—A by-product from handling leaf tobacco in both the unstemmed and stemmed forms, consisting of loose and tangled portions of tobacco leaves, few sweepings, and all other tobacco materials (except stems) which accumulate in auction and storage warehouses, packing and conditioning plants, and smeries. Scrap which accumulates from handling unstemmed leaf tobacco is known as leaf scrap and scrap which accumulates from handling stemmed leaf tobacco is known as strip scrap. The scrap group, covering both leaf scrap and strip scrap, is designated by the letter S.

Nondescript.—Any tobacco of a certain type which can not be placed in other groups of the type, or any nested tobacco, or any muddy or extremely dirty tobacco, or any tobacco containing an unusual quantity of foreign matter, or any crude tobacco, or any tobacco which is damaged to the extent of 20 per cent or more, or any tobacco infested with live tobacco beetles or other injurious insects, or any wet tobacco, or any tobacco that contains fat stems or wet butts. The nondescript group is designated by the letter N.

Cure.—To dry the sap from newly harvested tobacco by either natural or artificial process. Proper curing is done under such conditions as will permit of the chemical and physiological changes necessary to develop the desired quality and color in tobacco.

Flue cure.—To cure tobacco under artificial atmospheric conditions by a process of regulating the heat and ventilation without allowing smoke or fumes from the fuel to come in contact with the tobacco.

Fire cure.—To cure tobacco under artificial atmospheric conditions by the use of open fires, the smoke and fumes of which are allowed to come in contact with the tobacco.

Air cure.—To cure tobacco under natural atmospheric conditions without the use of fire, except for the purpose of preventing pole burn (house burn) in damp weather.

Cigar filler.—The tobacco that forms the core or inner part of a cigar. Cigar-filler tobacco is tobacco of the kind and quality commonly used for cigar fillers. Cigar-filler types are those which produce chiefly tobacco suitable for cigar-filler purposes.

Cigar binder.—A portion of a tobacco leaf rolled around the filler of a cigar to bind or hold it together and form the first covering. Cigar-binder tobacco is tobacco of the kind and quality commonly used for cigar binders. Cigar-binder types are those which produce chiefly tobacco suitable for cigar-binder purposes.

Cigar wrapper.—A portion of a tobacco leaf forming the outer covering of a cigar. Cigar-wrapper tobacco is tobacco of the kind and quality commonly used for cigar wrappers. Cigar-wrapper types are those which produce chiefly tobacco suitable for cigar-wrapper purposes.

Damage.—The effect of mold, mildew, rot, black rot, or other fungous or bacterial diseases which attack tobacco in its cured state. Any tobacco having the odor of mold, mildew, or rot shall be included in damaged tobacco. (Note distinction between "damage" and "injury.")

Injury.—Hurt or impairment from any cause except the fungous or bacterial diseases which attack tobacco in its cured state. Injured tobacco shall include any dead, burnt, or ragged tobacco; or tobacco that has been torn or broken, frozen or frosted, sunburned or scalded, scorched or fire killed, bulk burnt or steam burnt, pole burnt or house burnt, bleached or bruised; or tobacco containing discolored or deformed leaves; or tobacco hurt by insects; or tobacco affected by wildfire, black fire, rust, frog-eye, mosaic, freckling, sand drown, or other field diseases.

Needed.—Any lot of tobacco which has been so handled or packed as to conceal damaged, injured, tangled, or inferior tobacco, or foreign matter.

Crude.—Very unripe, and having the general appearance of being very immature. Crude tobacco ordinarily has a characteristic green color.

Foreign matter.—Any substance or material extraneous to tobacco leaves, such as dirt, sand, stalks, suckers, straw, and strings.

OFFICIAL PROMULGATION BY THE SECRETARY OF AGRICULTURE

By virtue of the authority vested in the Secretary of Agriculture by an act of Congress approved January 14, 1929 (Public, No. 661, 70th Cong.), I, Arthur M. Hyde, Secretary of Agriculture, do hereby establish and promulgate the following classes, types, and groups of grades of leaf tobacco to be known as the Classification of Leaf Tobacco, amending and superseding the Classification of Leaf Tobacco issued March 14, 1929, and to be in force and effect until amended or superseded by a classification hereafter established and promulgated by the Secretary of Agriculture under said act.

In testimony whereof I have hereunto set my hand and the official seal of the Department of Agriculture in the city of Washington this 14th day of October, 1929.

[SEAL]

Arthur M. Hyde

Secretary of Agriculture.

CLASSIFICATION OF LEAF TOBACCO

For the purpose of this classification, leaf tobacco shall be divided into the following classes:

CLASSES OF LEAF TOBACCO

- Class 1. Fine-cured types.
- Class 2. Fire-cured types.
- Class 3.¹ Air-cured types.
- Class 4. Cigar-filler types.
- Class 5. Cigar-binder types.
- Class 6. Cigar-wrapper types.
- Class 7. Miscellaneous domestic types.
- Class 8. Foreign-grown cigar-leaf types.
- Class 9. Foreign-grown types, other than cigar leaf.

For the purpose of this classification the classes shown on this page shall be divided into the following types and groups:

¹ Class 3 covers air-cured tobacco other than cigar leaf. This class may be subdivided as follows: Class 3a, light air-cured tobacco, including types 31 and 32, and class 3b, dark air-cured tobacco, including types 33, 36, and 37.

Class 1. Fire-cured types and groups

Type 11.—That type of fire-cured tobacco commonly known as old belt fire-cured, western district bright, middle belt fire-cured, or middle belt fire-cured; and produced principally in the piedmont sections of Virginia and North Carolina.

Type 12.—That type of fire-cured tobacco commonly known as eastern fire-cured, new belt of North Carolina fire-cured, eastern district bright, or eastern Carolina bright; and produced principally in the coastal plains section of North Carolina, north of the South River.

Type 13.—That type of fire-cured tobacco commonly known as southeastern fire-cured, southeastern bright, South Carolina fire-cured, or new belt of South Carolina and southeastern North Carolina; and produced principally in the coastal plains section of South Carolina and the southeastern counties of North Carolina south of the South River.

Type 14.—That type of fire-cured tobacco commonly known as southern fire-cured, southern bright, southern district bright, new belt of Georgia and Florida, Florida bright, Alabama bright, or Georgia fire-cured; and produced principally in the southern sections of Georgia and to some extent in Florida, Alabama, and Mississippi.

Groups applicable to types 11, 12, 13, and 14:

- A. Wrappers.
- B. Heavy leaf, cutting leaf, and fillers.
- C. Thin leaf or cutters.
- X. Lugs and ground leaves.
- S. Scrap, as defined.
- N. Nondescript, as defined.

Class 2. Fire-cured types and groups

Type 21.—That type of fire-cured tobacco commonly known as eastern fire-cured, Virginia fire-cured, smoked or dark-fired, or dark Virginia; and produced principally in the piedmont and mountain sections of Virginia.

Type 22.—That type of fire-cured tobacco commonly known as southern fire-cured, Clarksville, Hopkinsville, and Springfield fire-cured or dark-fired, a Kentucky-Tennessee broadleaf; and produced principally in a section east of the Tennessee River, in southern Kentucky and northern Tennessee.

Type 23.—That type of fire-cured tobacco commonly known as western fire-cured, Mayfield and Paducah dark-fired or western district dark; and produced principally in a section between the Tennessee, Ohio, and Mississippi Rivers in western Kentucky and northwestern Tennessee.

Type 24.—That type of fire-cured tobacco commonly known as northern fire-cured, Henderson dark-fired or smoked, the stemming district, or Madisonville dark or dark-fired, including the fire-cured of the Owensboro district; and produced principally in the Henderson district of Kentucky.

Groups applicable to types 21, 22, 23, and 24:

- A. Wrappers.
- B. Heavy leaf.
- C. Thin leaf.
- X. Lugs.
- S. Scrap, as defined.
- N. Nondescript, as defined.

Class 3. Air-cured types and groups

Type 31.—That type of air-cured tobacco commonly known as Burley, Burley air-cured, Red Burley, White Burley, or light air-cured of Kentucky; and produced principally in central and northeastern Kentucky, southern Ohio and Indiana, western West Virginia, central and eastern Tennessee, and sections of Virginia, North Carolina, Missouri, and Arkansas.

Groups applicable to type 31:

- A. Wrappers.
- B. Leaf or fillers and tips.
- C. Lugs or cutters.
- X. Trash, flyings and spods.
- S. Scrap, as defined.
- N. Nondescript, as defined.

Type 32.—That type of air-cured tobacco commonly known as southern Maryland tobacco, Maryland air-cured, or Maryland export; and produced principally in southern Maryland. (Upper country Maryland is classed as "miscellaneous domestic.")

Groups applicable to type 32:

- B. Heavy leaf, locally known as dull crop.
- C. Thin leaf, locally known as bright crop.
- X. Second and ground leaves.
- S. Scrap, as defined.
- N. Nondescript, as defined.

Type 35.—That type of air-cured tobacco commonly known as One-Sucker, One-Sucker air-cured, Kentucky-Tennessee One-Sucker, Indiana One-Sucker, or dark air-cured One-Sucker, including the upper Cumberland district One-Sucker; and produced principally in northern Tennessee, south central Kentucky, and southern Indiana.

Type 36.—That type of air-cured tobacco commonly known as Green River, Green River air-cured, Henderson district air-cured, or Owensboro district air-cured; and produced principally in the Green River section of Kentucky in both the Owensboro and Henderson districts.

Type 37.—That type of air-cured or sun-cured tobacco commonly known as Virginia sun-cured, Virginia sun and air-cured, or dark Virginia air-cured; and produced principally in the central section of Virginia north of the James River.

Groups applicable to types 35, 36, and 37:

- A. Wrappers.
- B. Heavy leaf.
- C. Thin leaf.
- X. Lugs.
- S. Scrap, as defined.
- N. Nondescript, as defined.

Class 4. Cigar-filler types and groups

Type 41.—That type of cigar-leaf tobacco commonly known as Pennsylvania Broadleaf, Pennsylvania Broadleaf, Pennsylvania filler type, or Lancaster and York County filler type; and produced principally in Lancaster County, Pa., and the adjoining counties.

Groups applicable to type 41:

- B. Binders or tops.
- C. Fillers, locally known as wrappers or B's.
- X. Stemming, farm fillers, ground leaves, and crops unsuitable for sorting.
- S. Scrap, as defined.
- N. Nondescript, as defined.

Type 42.—That type of cigar-leaf tobacco commonly known as Gebhardt, Ohio Seedleaf, or Ohio Broadleaf; and produced principally in the Miami Valley section of Ohio and extending into Indiana.

Type 43.—That type of cigar-leaf tobacco commonly known as Zimmer, Ohio Zimmer, or Zimmer Spanish; and produced principally in the Miami Valley section of Ohio and extending into Indiana.

Type 44.—That type of cigar-leaf tobacco commonly known as Dutch, Shoe-string Dutch, or Little Dutch; and produced principally in the Miami Valley section of Ohio.

Groups applicable to types 42, 43, and 44:

- C. Fillers, locally known as wrappers.
- X. Stemming, farm fillers, ground leaves, and crops unsuitable for sorting.
- S. Scrap, as defined.
- N. Nondescript, as defined.

Type 45.—That type of cigar-leaf tobacco commonly known as Georgia and Florida sun-grown cigar leaf, or the Georgia and Florida filler type; and produced principally in southwestern Georgia and the central part of northern Florida.

Groups applicable to type 45:

- C. Fillers.
- X. Stemming, ground leaves, and crops unsuitable for sorting.
- S. Scrap, as defined.
- N. Nondescript, as defined.

Type 46.—That type of cigar-leaf tobacco commonly known as Porto Rican sun-grown or the Porto Rican filler type, including primed (deshojado) and stalk-cut (manajo); and produced in Porto Rico.

Groups applicable to type 46:

- C. Tripas or fillers.
- X. Resagas, terceros, boliches, and crops unsuitable for sorting.
- S. Scrap (picadura), as defined.
- N. Nondescript, as defined.

Class 5. Cigar-Binder Types and Groups

Type 51.—That type of cigar-leaf tobacco commonly known as Connecticut Broadleaf or Connecticut Valley Broadleaf; and produced principally in the Connecticut Valley section of Connecticut and Massachusetts.

Type 52.—That type of cigar-leaf tobacco commonly known as Connecticut Valley Havana Seed, Connecticut Havana Seed, primed Havana, or stalk-cut Havana; and produced principally in the Connecticut Valley section of Connecticut and Massachusetts.

Type 53.—That type of cigar-leaf tobacco commonly known as York State Tobacco, Havana Seed of New York, or the binder type of New York and Pennsylvania; and produced principally in the Big Flats and Onondaga sections of New York State, and extending into Pennsylvania.

Groups applicable to types 51, 52, and 53:

- A. Wrappers.
- B. Binders, locally known as secondas.
- C. Fillers, locally known as tips or B's.
- X. Stemming, sand-leaf fillers, ground leaves, and crops unsuitable for sorting.
- S. Scrap, as defined.
- N. Nondescript, as defined.

Type 54.—That type of cigar-leaf tobacco commonly known as southern Wisconsin cigar leaf and southern Wisconsin binder type; and produced principally south and east of the Wisconsin River, and extending into Illinois.

Type 55.—That type of cigar-leaf tobacco commonly known as northern Wisconsin cigar leaf, or northern Wisconsin binder type; and produced principally north and west of the Wisconsin River, and to some extent in Minnesota.

Groups applicable to types 54 and 55:

- B. Binders.
- C. Fillers, locally known as tips or B's.
- X. Stemming, sand-leaf fillers, bottom leaves, and crops unsuitable for sorting.
- S. Scrap, as defined.
- N. Nondescript, as defined.

Class 6. Cigar-wrapper types and groups

Type 61.—That type of cigar-leaf tobacco commonly known as northern shade, Connecticut Valley shade-grown, or shade of Connecticut; and produced principally in the Connecticut Valley section of Connecticut and Massachusetts.

Type 62.—That type of cigar-leaf tobacco commonly known as southern shade, Georgia and Florida shade-grown, or shade of Georgia and Florida; and produced principally in southwestern Georgia and in the central part of northern Florida.

Groups applicable to types 61 and 62:

- A. Wrappers.
- B. Binders.
- C. Fillers, or tips.
- X. Trashy fillers or loose leaves.
- S. Scrap, as defined.
- N. Nondescript, as defined.

Class 7. Miscellaneous types of domestic tobacco

No type or group divisions have been worked out for class 7. For the purposes of the tobacco-stocks reports all miscellaneous domestic tobacco shall be designated as follows:

Type 79.—All domestic-grown tobacco which has not been otherwise classified. Included in the miscellaneous types are such types as Ohio fire-cured and fire-cured (known as Eastern Ohio). Upper country Maryland, Louisiana perique, California Turkish, and Virginia One-Sucker, and the production of the insular possessions of the United States not otherwise classified.

Class 8. Foreign-grown cigar-leaf types

No type or group divisions have been worked out for class 8. For the purposes of the tobacco-stocks reports all foreign-grown cigar-leaf tobacco shall be designated as follows:

Type 89.—All imported Sumatra, Java, Cuba (Havana) and other foreign-grown cigar-leaf tobacco in the continental United States, including that in customs bonded warehouses and factories and that withdrawn from bond.

Class 9. Foreign-grown types other than cigar leaf

No type or group divisions have been worked out for class 9. For the purposes of the tobacco stocks reports all foreign-grown types other than cigar-leaf tobacco shall be designated as follows:

Type 90.—All leaf tobaccos imported from Turkey, Greece, Bulgaria, Russia, China, or other countries which are used principally for cigarettes, pipe smoking, or chewing purposes.

TOBACCO STOCKS AND STANDARDS ACT

(Public—No. 661—70th Congress)

(H. R. 53)

As Act To provide for the collection and publication of statistics of tobacco by the Department of Agriculture

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of Agriculture be, and he is hereby, authorized and directed to collect and publish statistics of the quantity of leaf tobacco in all forms in the United States, in the possession of dealers, manufacturers, growers' cooperative associations, warehousemen, brokers, holders, or owners, other than the original growers of tobacco. The statistics shall show the quantity of tobacco in such detail as to types and groups of grades as the Secretary of Agriculture shall deem to be practical and necessary for the purposes of this Act, and said statistics shall show the stocks of tobacco of the last four crop years, including therein the production of the year of the report, which shall be known as new crops, separately from the stocks of previous years, which shall be known as old crops, and shall be summarized as of January 1, April 1, July 1, and October 1 of each year: *Provided*, That the Secretary of Agriculture shall not be required to collect statistics of leaf tobacco from any manufacturer of tobacco who in the preceding calendar year, according to the returns of the Commissioner of Internal Revenue, manufactured less than fifty thousand pounds of tobacco, or from any manufacturer of cigars who during the preceding calendar year manufactured less than two hundred and fifty thousand cigars, or from any manufacturer of cigarettes who, during the preceding calendar year, manufactured less than one million cigarettes, or from any dealer in leaf tobacco who, on the average, had less than fifty thousand pounds in stock at the ends of the four quarters of the preceding calendar year.

Sec. 2. The Secretary of Agriculture shall establish standards for the classification of tobacco. He shall specify the types and groups of grades which shall be included in the returns required by this Act. Such returns shall show the quantity of tobacco by such types and groups of grades for new and old crops separately. The Secretary of Agriculture shall prepare appropriate blanks upon which the returns shall be made, and shall, upon request, furnish copies to persons who are required by this Act to make returns.

Sec. 3. It shall be the duty of every dealer, manufacturer, growers' cooperative association, warehouseman, broker, holder, or owner, other than the original grower, except such persons as are excluded by the proviso to Section 1 of this Act, to furnish within ten days after January 1, April 1, July 1, and October 1 of each year, completely and correctly, to the best of his knowledge, a report of the quantity of leaf tobacco on hand, segregated in accordance with the blanks furnished by the Secretary of Agriculture. Any person, firm, association, or corporation required by this Act to furnish a report, and any officer, agent, or employee thereof who shall refuse or willfully neglect to furnish any of the information required by this Act, or shall willfully give answers that are false or misleading, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than \$300 or more than \$1,000 or imprisoned not more than one year, or both.

Sec. 4. The word "person" as used in this Act shall be held to embrace also any partnership, corporation, association, or other legal entity.

Sec. 5. The Secretary of Agriculture shall have access to the tobacco records of the Commissioner of Internal Revenue and of the several collectors of internal revenue for the purpose of obtaining lists of the persons subject to this Act and for the purpose of aiding the collection of the information herein required, and the Commissioner of Internal Revenue and the several collectors of internal revenue shall cooperate with the Secretary of Agriculture in effectuating the provisions of this Act.

Sec. 6. The returns herein provided for shall be made under oath before a collector, deputy collector of internal revenue, a postmaster, assistant postmaster, or any authorized to administer oaths by State or Federal law.

Sec. 7. That the information furnished under the provisions of this Act shall be used only for the statistical purposes for which it is supplied. No publication shall be made by the Secretary of Agriculture whereby the data furnished by any particular establishment can be identified, nor shall the Secretary of Agriculture permit anyone other than the sworn employees of the Department of Agriculture to examine the individual reports submitted by the Bureau of the Census in hereby repealed.

Sec. 8. The Act approved April 30, 1913, providing for the collection of tobacco taxes is hereby repealed.

Sec. 9. If any provision of this Act is declared unconstitutional or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of the Act and the applicability of such provisions to other persons and circumstances shall not be affected thereby.

Approved, January 14, 1929.



DEFENDANT'S EXHIBIT NO. 7.

(281)

Filed July 1, 1937.

R6

For release July 27, 1936

**UNITED STATES DEPARTMENT OF
AGRICULTURE**

BUREAU OF AGRICULTURAL ECONOMICS

Washington, D. C.

ANNOUNCEMENT OF REFERENDUM

under

THE TOBACCO INSPECTION ACT

Pursuant to the provisions of The Tobacco Inspection Act (49 Stat. 731) and the Regulations of the Secretary of Agriculture thereunder, announcement is hereby made that a referendum will be held from August 3 to August 8, 1936, inclusive, to determine whether the flue-cured tobacco market of Oxford, North Carolina shall be designated under the Act for free and mandatory inspection of tobacco.

Growers who, according to the records of the Collector of Internal Revenue, sold flue-cured tobacco at auction on the above named market during the 1935/36 season, are entitled to vote.

During the period of the referendum growers can secure ballots from their County Agents in the flue-cured tobacco belt of North Carolina and cast their votes in the Office of the County Agent or at meetings scheduled by the County Agents.

Postmasters and Warehousemen are requested to post this announcement prominently. County Agents and Agricultural Teachers are requested to give such publicity

196 HENRY A. WALLACE, SECRETARY, ET AL., APPELLANTS,
to this announcement as may be necessary to inform
growers who are eligible to vote.

Bureau of Agricultural Economics.

DEFENDANT'S EXHIBIT NO. 8.

(282)

Filed July 1, 1937.

**UNITED STATES DEPARTMENT OF
AGRICULTURE**

BUREAU OF AGRICULTURAL ECONOMICS

Washington, D. C.

July 30, 1936.

**TO COUNTY AGENTS IN THE FLUE-CURED TO-
BACCO DISTRICT OF VA. & N. C.**

Dear Sir:

You have no doubt, been advised by the Director of Extension in regard to a referendum to be held on the Oxford, N. C. market from August 3 to August 8, inclusive. Ballots will be addressed for mailing to growers who are eligible to vote in this referendum so far as their names and addresses are known. These ballots will be enclosed in window envelopes, together with a mimeographed circular explaining points in the referendum. The window envelopes will then be mailed in packages to County Agents, unsealed.

When these are received by you, it will be appreciated if you will enclose a return addressed envelope and a covering letter. Each window envelop will then have the following four enclosures:

1. Ballot, Form TS-R6.
2. Mimeographed Circular.
3. County Agent's Letter.
4. Envelope addressed for return of ballot to County Agent.

As soon as practical, it will be appreciated if you would make the additional enclosures and mail this material,

In a few cases we do not have the addresses of the growers. In these cases it would be appreciated if you will fill in the addresses on the ballots.

Under separate cover we are mailing you ----- ballots, together with an equal number of mimeographed circulars. We are also sending a few copies of The Tobacco Inspection Act, the Rules and Regulations, thereunder, and Announcements of this referendum. This material is for use in case of growers who feel that they are eligible to vote, and who may not have been mailed a ballot, or for any reason may not have received their ballots. You will notice in the Announcements that growers have been advised that they can secure a ballot and vote in any County Agent's office in the flue-cured district of North Carolina and Virginia. It will not be necessary to have proof of eligibility of any grower to vote since all ballots will be checked against Internal Revenue records.

We are anxious to have a large vote in this referendum. For that reason we would appreciate anything that you will be able to do in order to get the votes out in your County.

Very truly yours,

F. B. WILKINSON,
FRANK B. WILKINSON,
Senior Tobacco Marketing Specialist.

DEFENDANT'S EXHIBIT NO. 9.

(283)

Filed July 1, 1937.

Form TS-R6

UNITED STATES DEPARTMENT OF
AGRICULTURE

BUREAU OF AGRICULTURAL ECONOMICS

TOBACCO SECTION

August 1936

REFERENDUM BALLOT UNDER THE U. S. TOBACCO INSPECTION ACT

This form may be used in voting on free and mandatory inspection of tobacco on the Oxford, N. C. market.

**DO YOU FAVOR FREE AND MANDATORY
INSPECTION OF TOBACCO UNDER THE
TOBACCO INSPECTION ACT WHEN SOLD
AT AUCTION ON THE ABOVE NAMED
MARKET?**

Answer YES or NO-----

Signature of grower: -----

Address: -----

INSTRUCTIONS

The Act and Regulations of the Secretary of Agriculture thereunder provide that no grower shall vote in more than one referendum in the same class of tobacco. Therefore, if a grower has voted in any other Flue-cured referendum held under the Act he is not eligible to vote in this referendum. The balloting period for this referendum will close August 8, 1936. All ballots should be delivered to the local county agents or mailed to "Tobacco Section, U. S. Department of Agriculture, Box 2137, Greensboro, N. C." Ballots mailed or delivered after midnight of August 8 will not be counted.

**SEE EXPLANATORY INFORMATION ON BACK
(OVER)**

(284) EXPLANATORY INFORMATION

This form is being supplied in order that you may express your desire with respect to the inspection of tobacco on the Oxford, N. C. market. If two-thirds of the growers voting in any referendum favor the designation of a market, the Secretary of Agriculture is authorized to designate such market under The Tobacco Inspection Act for free and mandatory inspection.

After a market has been designated by the Secretary, no warehouseman may lawfully offer tobacco for sale at auction thereon until it has been officially inspected and certificated. The entire cost of inspection and certification on a designated market will be borne by the U. S. Department of Agriculture. In addition, the Department will furnish without cost daily or weekly official Market News Reports, showing the average prices at which each grade sold in the type area. The grades will be announced in the auction.

Tobacco inspection is the determination of grade on the auction floors by an official inspector. Inspection on designated markets will be made in the warehouse prior to the sale and the Government grade will be marked on warehouse tickets.

The inspection will not interfere with the manner in which farmers customarily deliver their tobacco to market. Nor will it interfere with any other privileges of the tobacco farmers. Following the auction, a farmer can make rejections when he is not satisfied with the price offered. He can sell his tobacco when and where he pleases. Voting in this referendum places no obligation whatsoever upon the grower.

When this free service is furnished, growers will have a reliable guide to the quality of each lot of tobacco and the average market price paid. With this information, farmers will be in a position to make wise rejections. If you desire this information, vote "YES".

County agents and agricultural teachers in the vicinity of this market are being supplied with copies of The Tobacco Inspection Act and other literature relating to the inspection of flue-cured tobacco. If you desire any further information in regard to this referendum see your county agent or agricultural teacher.

DEFENDANT'S EXHIBIT NO. 10.

(285) - 4 Filed July 1, 1937.

DEPARTMENT OF AGRICULTURE
Bureau of Agricultural Economics

**ORDER OF DESIGNATION
OF TOBACCO MARKETS**

(NORTH CAROLINA)

WHEREAS, the Act of Congress approved August 23, 1935 (49 Stat., 731) entitled "THE TOBACCO INSPECTION ACT" contains the following provisions:

"Sec. 2. That transactions in tobacco involving the sale thereof at auction as commonly conducted at auction markets are affected with a public interest; that such transactions are carried on by tobacco producers generally and by persons engaged in the business of buying and selling tobacco in commerce; that the classification of tobacco according to type, grade, and other characteristics affects the prices received therefor by producers; that without uniform standards of classification and inspection the evaluation of tobacco is susceptible to speculation, manipulation, and control, and unreasonable fluctuations in prices and quality determination occur which are detrimental to producers and persons handling tobacco in commerce; that such fluctuations constitute a burden upon commerce and make the use of uniform standards of classification and inspection imperative for the protection of producers and others engaged in commerce and the public interest therein."

"Sec. 5. That the Secretary is authorized to designate those auction markets where tobacco bought and sold thereon at auction, or the products customarily manufactured therefrom, moves in commerce. Before any market is designated by the Secretary under this section he shall determine by referendum the desire of tobacco growers who sold tobacco at auction on such market during the preceding marketing season. The Secretary may

at his discretion hold one referendum for two or more markets or for all markets in a type area. No market or group of markets shall be designated by the Secretary unless two-thirds of the growers voting favor it. The Secretary shall have access to the tobacco records of the Collector of Internal Revenue and of the several collectors of internal revenue for the purpose of obtaining the names and addresses of growers who sold tobacco on any auction market, and the Secretary shall determine from said records the eligibility of such grower to vote in such referendum, and no grower shall be eligible to vote in more than one referendum. After public notice of not less than thirty days that any auction market has been so designated by the Secretary, no tobacco shall be offered for sale at auction on such market until it shall have been inspected and certified by an authorized representative of the Secretary according to the standards established under this Act, except that the Secretary may temporarily suspend the requirement of inspection and certification at any designated market (286) whenever he finds it impracticable to provide for such inspection and certification because competent inspectors are not obtainable or because the quality of tobacco available for inspection is insufficient to justify the cost of such service: Provided, That, in the event competent inspectors are not available, or for other reasons, the Secretary is unable to provide for such inspection and certification at all auction markets within a type area, he shall first designate those auction markets where the greatest number of growers may be served with the facilities available to him. No fee or charge shall be imposed or collected for inspection or certification under this section at any designated auction market. Nothing contained in this Act shall be construed to prevent transactions in tobacco at markets not designated by the Secretary or at designated markets where the Secretary has suspended the requirement of inspection or to authorize the Secretary to close any market."

and

WHEREAS, pursuant to said Act a referendum has been held among growers of flue-cured tobacco in North Carolina, commonly referred to as Type 11(b) tobacco, who sell tobacco on the auction market at Oxford, North

Carolina, in which referendum said growers were given an opportunity to vote for or against the designation of said market, as provided in Section 5 of said Act; and

WHEREAS, more than two-thirds of the growers of tobacco voting in said referendum voted in favor of said designation,

NOW, THEREFORE, by virtue of the authority conferred upon me by Section 5 of The Tobacco Inspection Act and the affirmative results of the referendum conducted thereunder, the city of Oxford, North Carolina, is designated as a market where the tobacco bought and sold thereon at auction, or the products customarily made therefrom, moves in commerce.

IT IS HEREBY ORDERED that, effective 30 days from this date no tobacco shall be offered for sale at auction on the above-named market until it shall have been inspected and certified by an authorized representative of the United States Department of Agriculture according to standards established under the Act; provided, however, that the requirement of inspection and certification may be suspended at such times as it is found impracticable to provide inspectors or when the quality of tobacco available for inspection is insufficient to justify the cost of such service. No fee or charge shall be imposed or collected for the inspection and certification of tobacco sold or offered for sale at auction on the market designated herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the official seal of the Department of Agriculture to be affixed in the City of Washington, this 26th day of August 1936.

(Signed) H. A. WALLACE,
Secretary of Agriculture.

(DEPT. SEAL)

DEFENDANT'S EXHIBIT NO. 11.

(288) Filed July 1, 1937.

**UNITED STATES DEPARTMENT OF
AGRICULTURE**

Bureau of Agricultural Economics

Washington, D. C.

**OFFICIAL STANDARD GRADES FOR FLUE-CURED
TOBACCO**

(U. S. Types 11, 12, 13, and 14)

By virtue of the authority vested in the Secretary of Agriculture by The Tobacco Inspection Act, approved August 23, 1935 (49 Stat., 731), I, R. G. TUGWELL, Acting Secretary of Agriculture, do prescribe and promulgate the following grades for flue-cured tobacco, to be known as the Official Standard Grades for Flue-cured Tobacco, to be in force and effect on and after August 11, 1936, and until amended or superseded by grades for flue-cured tobacco hereafter prescribed and promulgated under said Act.

**PREPARED UNDER AUTHORITY OF
THE TOBACCO INSPECTION ACT**

(49 Stat., 731)

August, 1936.

**OFFICIAL STANDARD GRADES FOR FLUE-CURED
TOBACCO**

(289)

WRAPPER GRADES (A-Group)

General Specifications: All grades of the A group must be clean, sound, ripe, firm, strong, and over 16" long, must have an open weave, light to true color shade, clear to bright finish, and small to medium size and blending fibers. General tolerance, 5% injury of a nature affecting wrapper yield.

U. S GRADE	GRADE DESCRIPTION, SPECIFICA- TIONS, AND TOLERANCE.
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- | | |
|-----|---|
| A1L | Choice Quality Wrapper in Lemon Color.
Very silky, very fine texture, very elastic, oily, thin to medium body, spready, uniform. Tolerance, 20% leaves of a quality not lower than B2 or C3. |
| A1F | Choice Quality Wrapper in Orange Color.
Very oily, medium to fleshy body, otherwise same as A1L. |
| A1R | Choice Quality Wrapper in Red or Mahogany Color.
Rich in oil, fleshy to heavy body, otherwise same as A1L. |
| A2L | Fine Quality Wrapper in Lemon Color.
Silky, fine texture, elastic, oily, thin to medium body, spready, uniform. Tolerance, 40% leaves of a quality not lower than B2 or C3. |
| A2F | Fine Quality Wrapper in Orange Color.
Very oily, medium to fleshy body, otherwise same as A2L. |
| A2R | Fine Quality Wrapper in Red or Mahogany Color.
Rich in oil, fleshy to heavy body, otherwise same as A2L. |
| A3L | Good Quality Wrapper Picker in Lemon Color.
Fairly silky, good texture, fairly elastic, oily, thin to medium body, normal width, fairly uniform. Tolerance, 60% leaves of a quality not lower than B2 or C3. |
| A3F | Good Quality Wrapper Picker in Orange Color.
Very oily, medium to fleshy body, otherwise same as A3L. |
| A3R | Good Quality Wrapper Picker in Red or Mahogany Color.
Rich in oil, fleshy to heavy body, otherwise same as A3L. |

LEAF GRADES (B-Group)

General Specifications: All grades of the B group must be clean, sound, medium to heavy body, and must not exceed the tolerance specified with respect to injury and lugs.

U. S. GRADE	GRADE DESCRIPTION, SPECIFICATIONS, AND TOLERANCE.
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	Choice Quality Leaf in Lemon Color.
B1L	Very smooth, very good texture, stretchy, oily, ripe, firm, medium body, strong, normal width, open weave, light color shade, bright finish, medium size and blending fibers, uniform. Tolerance, 5% injury.
	Choice Quality Leaf in Orange Color.
B1F	Very oily, medium to fleshy body, otherwise same as B1L.
	Choice Quality Leaf in Red or Mahogany Color.
B1R	Rich in oil, fleshy body, otherwise same as B1L.
(290)	Fine Quality Leaf in Lemon Color.
B2L	Smooth, good texture, stretchy, oily, ripe, firm, medium body, strong, normal width, open weave, fairly light color shade, bright finish, emerging fibers, fairly uniform. Tolerance, 10% injury.
	Fine Quality Leaf in Orange Color.
B2F	Very oily, medium to fleshy body, otherwise same as B2L.
	Fine Quality Leaf in Red or Mahogany Color.
B2R	Rich in oil, fleshy body, otherwise same as B2L.
	Good Quality Leaf in Lemon Color.
B3L	Fairly smooth, fair texture, fairly oily, ripe, firm, medium body, fairly strong, normal width, true color shade, clear finish, harmonizing. Tolerance, 15% injury.
	Good Quality Leaf in Orange Color.
B3F	Oily, medium to fleshy body, otherwise same as B3L.

B3R Good Quality Leaf in Red or Mahogany Color.
Rich in oil, fleshy body, otherwise same as B3L.

B3D Good Quality Leaf in Dark Red or Walnut Color.
Rich in oil, heavy body, otherwise same as B3L.

B3G Good Quality Leaf in Green Color.
Quality of B3 or better, except maturity.

B4L Fair Quality Leaf in Lemon Color.
Unrough, fairly ripe, medium body, normal strength, not stringy, fairly true color shade, fairly clear finish, unmingled. Tolerance, 20% injury and 10% lugs of the quality of X3 or better.

B4F Fair Quality Leaf in Orange Color.
Medium to fleshy body, otherwise same as B4L.

B4R Fair Quality Leaf in Red or Mahogany Color.
Fleshy body, otherwise same as B4L.

B4D Fair Quality Leaf in Dark Red or Walnut Color.
Heavy Body, otherwise same as B4L.

B4G Fair Quality Leaf in Green Color.
Quality of B4, except maturity.

B5L Low Quality Leaf in Lemon Color.
Fairly ripe, medium body, dusky color shade, dull finish, unmixed. Tolerance, 30% injury and 20% lugs of the quality of X3 or better.

B5F Low Quality Leaf in Orange Color.
Medium to fleshy body, otherwise same as B5L.

B5R Low Quality Leaf in Red or Mahogany Color.
Fleshy body, otherwise same as B5L.

B5D Low Quality Leaf in Dark Red or Walnut Color.
Heavy body, otherwise same as B5L.

B5G Low Quality Leaf in Green Color.
Quality of B5, except maturity.

- (291) Common Quality Leaf in Lemon Color.
 B6L Fairly ripe, medium body, dark color shade, dingy finish. Tolerance, 40% injury and 30% lugs.
- B6F Common Quality Leaf in Orange Color.
 Medium to fleshy body, otherwise same as B6L.
- B6R Common Quality Leaf in Red or Mahogany Color.
 Fleshy body, otherwise same as B6L.
- B6D Common Quality Leaf in Dark Red or Walnut Color.
 Heavy body, otherwise same as B6L.
- B6G Common Quality Leaf in Green Color.
 Quality of B6, except maturity.

CUTTER GRADES (C-Group)

General Specifications: All grades of the C group must be clean, sound, thin to medium body, must have an open weave and small to medium size fibers, and must not exceed the tolerance specified with respect to injury and lugs.

U. S. GRADE	GRADE DESCRIPTION, SPECIFICATIONS, AND TOLERANCE.
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|-----|--|
| C1L | Choice Quality Cutters in Lemon Color.
Very silky, fine texture, oily, thoroughly ripe, firm, thin body, fairly strong, spready, light color shade, bright finish, blending fibers, uniform. Tolerance, 5% injury. |
| C1F | Choice Quality Cutters in Orange Color.
Fairly thin to medium body, otherwise same as C1L. |
| C2L | Fine Quality Cutters in Lemon Color.
Silky, very good texture, oily, thoroughly ripe, firm, thin body, fairly strong, fairly spready, light color shade, very clear finish, blending fibers, fairly uniform. Tolerance, 10% injury. |

- C2F** Fine Quality Cutters in Orange Color.
Fairly thin to medium body, otherwise same as C2L.
- C3L** Good Quality Cutters in Lemon Color.
Very smooth, good texture, fairly oily, ripe, fairly firm, thin body, normal strength, normal width, fairly light color shade, clear finish, emerging fibers, harmonizing. Tolerance, 15% injury and 10% lugs of the quality of X2 or better.
- C3F** Good Quality Cutters in Orange Color.
Fairly thin to medium body, otherwise same as C3L.
- C4L** Fair Quality Cutters in Lemon Color.
Smooth, fair texture, lean, ripe, thin body, normal strength, normal width, true color shade, normal finish, unmingled. Tolerance, 20% injury and 20% lugs of the quality of X2 or better.
- C4F** Fair Quality Cutters in Orange Color.
Fairly thin to medium body, otherwise same as C4L.
- C5L** Low Quality Cutters in Lemon Color.
Fairly smooth, lean, fairly ripe, thin body, not tender, normal width, fairly true color shade, normal to dull finish, unmixed. Tolerance, 20% injury and 30% lugs of quality of X3 or better.
- C5F** Low Quality Cutters in Orange Color.
Fairly thin to medium body, otherwise same as C5L.

(292) LUG GRADES (X-Group)

General Specifications: All grades of the X group must be clean, sound, and must not exceed the tolerance specified with respect to dead and trashy leaves.

U. S.
GRADE

GRADE DESCRIPTION, SPECIFICATIONS, AND TOLERANCE.

X1L	Choice Quality Cutting Lugs in Lemon Color. Smooth, fairly oily, thoroughly ripe, thin to medium body, grainy, very open weave, true color shade, fairly clear finish, fairly uniform. Tolerance, 5% of dead and trashy leaves.
X1F	Choice Quality Cutting Lugs in Orange Color. Medium body, otherwise same as X1L.
X1R	Choice Quality Leafy Lugs in Red or Mahogany Color. Oily, medium to heavy body, otherwise same as X1L.
X2L	Fine Quality Cutting Lugs in Lemon Color. Fairly smooth, thoroughly ripe, thin to medium body, fairly grainy, open weave, fairly true color shade, normal finish, unmingled. Tolerance, 10% of dead and trashy leaves.
X2F	Fine Quality Cutting Lugs in Orange Color. Medium body, otherwise same as X2L.
X2R	Fine Quality Leafy Lugs in Red or Mahogany Color. Oily, medium to heavy body, otherwise same as X2L.
X3L	Good Quality Cutting or Granulating Lugs in Lemon Color. Unrough, ripe, thin to medium body, fairly grainy, fairly open weave, fairly dusky color shade, dull finish, unmixed. Tolerance, 20% of dead and trashy leaves.
X3F	Good Quality Cutting or Granulating Lugs in Orange Color. Medium body, otherwise same as X3L.
X3R	Good Quality Leafy Lugs in Red or Mahogany Color. Fairly oily, medium to heavy body, otherwise same as X3L.

- X3G Good Quality Lugs in Green Color.
Quality of X3, except maturity.
- X4L Fair Quality Granulating Lugs in Lemon Color.
Fairly ripe, thin to medium body, dusky color
shade, cloudy finish. Tolerance, 40% dead and
trashy leaves.
- X4F Fair Quality Granulating Lugs in Orange Color.
Medium body, otherwise same as X4L.
- X4R Fair Quality Leafy Lugs in Red or Mahogany
Color.
Medium to heavy body, otherwise same as X4L.
- X4G Fair Quality Granulating Lugs in Green Color.
Quality of X4, except maturity.
- (293) Common Quality Granulating Lugs in Lemon
Color.
- X5L Thin to medium body, dark color shade, dingy
finish. Tolerance, 60% dead and trashy leaves.
- X5F Common Quality Granulating Lugs in Orange
Color.
Medium body, otherwise same as X5L.
- X5R Common Quality Leafy Lugs in Red or Mahog-
any Color.
Medium to heavy body, otherwise same as X5L.
- X5G Common Quality Lugs in Green Color.
Quality of X5, except maturity.

NONDESCRIPT AND SCRAP (N & S Groups)

- N Nondescript, as defined.
- S Scrap, as defined.

DEFINITIONS AND RULES

For the purpose of these official standard grades, the following terms shall be construed, respectively, to mean:

Airdried.—The Condition of unfermented tobacco as customarily prepared for storage under natural atmospheric conditions.

Body.—The thickness of a leaf or weight per unit of surface.

Class.—A major division of tobacco based on characteristics caused by varieties, soils, or climatic conditions, and the methods of cultivation, harvesting, or curing.

Clean.—Normally free of dirt and other foreign matter.

Condition.—The state of tobacco in storage, or in relation to its preparation for storage, with reference to its manner of preparation or its degree of fermentation, such as Undried, Airdried, Steamdried, Sweating, Sweated, and Resweated.

Crude.—Very immature or the lowest degree of maturity. Any tobacco of which 50% or more of its surface as a positive green color is crude.

Cured.—Tobacco dried of its sap by either natural or artificial processes.

Cutters.—Tobacco which is very thin to medium in body as compared with the average body of the type and which has the characteristics of lugs, except with (294) respect to injury and finish.

Damage.—The effect of mold, must, rot, black-rot, or other fungus or bacterial diseases which attack tobacco in its cured state, including tobacco having the odor of mold, must, or rot.

Flue-cured.—Tobacco cured under artificial atmospheric conditions by a process of regulating the heat and ventilation without allowing smoke or fumes from the fuel to come in contact with the tobacco.

Foreign matter.—Any substance or material extraneous to tobacco, including dirt, sand, stalks, suckers, straw, strings, et cetera.

Form.—The stage of preparation of tobacco, such as Unstemmed and Stemmed.

Grade.—A subdivision of a type according to group and quality, and according to color when it is of sufficient importance to be treated as a separate factor.

Green.—Tobacco of which 20% or more of its leaf surface is predominantly green in color.

Greenish-tinge.—Tobacco of which 20% or more of its leaf surface has a decided greenish-cast or tobacco which is not 20% green but which has 20% of green and greenish-cast combined.

Group.—A division of a type covering several closely related grades based on the general quality of the tobacco, including body, the percentage of injury, and other characteristics.

Injury.—Hurt or impairment from any cause except damage. Injured tobacco shall include dead, burnt, hail-cut, or ragged tobacco; or tobacco that has been torn or broken, frozen or frosted, sunburned or scaled, scorched or fire-killed, bulk-burnt or steam-burnt, pole-burnt or house-burnt bleached or bruised; or tobacco containing discolored or deformed leaves; or tobacco hurt by insects, or tobacco having an odor foreign to the type; or tobacco affected by wild-fire, rust, frog-eye, mosaic, freching, sand-drown, or other similar diseases.

Leaf.—Tobacco which is medium to thick in body as compared with the average body of the type and which does not have the characteristics of lugs.

Leaf-scrap.—Unstemmed scrap, which is a by-product from handling unstemmed tobacco consisting of loose and tangled whole or broken leaves.

Lugs.—Any lot of tobacco, except nondescript and scrap, composed chiefly of comparatively thin and lean leaves, and showing a material amount of injury of the kind characteristic of leaves grown near the ground; or any tobacco except nondescript and scrap, injured or

containing lug leaves, in excess of the tolerance allowed (295) in the grades of the B₁ and C groups.

Mixed.—A lot of tobacco which contains 30% or more leaves or *distinctly different* quality or color from the run of the lot, including variegated leaves unless such leaves of *distinctly different* quality or color from the tains less than 20% of green.

Nested.—Any lot of tobacco which has been so loaded, packed, or arranged as to conceal foreign matter or tobacco of inferior grade, quality, or condition, including lots of tobacco which contain damaged, injured, tangled, or other inferior tobacco which can not be readily detected upon inspection on account of the way the lot was packed or arranged.

Nondescript.—Any nested tobacco; or muddy or extremely dirty tobacco; or tobacco containing an unusual amount of foreign matter; or tobacco containing over 40% of crude leaves; or tobacco damaged to the extent of 20% or more; or tobacco infested with live tobacco beetles or other injurious insects; or wet tobacco; or uncured tobacco including fat-stems and wet-butts; or very inferior lots of tobacco of a quality that is not ordinarily marketed; or tobacco having characteristics distinctly foreign to the type.

Premature.—A low degree of maturity, but having the appearance of being ripe.

Primings.—Any lugs composed of very thin, pale, silky, and premature leaves, very low in oil and wax, and of a dull and dingy finish.

Quality.—A division of group, forming the second factor of a grade, based upon the relative degree of one or more of the elements of quality in tobacco.

Resweated.—The condition of tobacco which has passed through a second fermentation under abnormally high temperatures, or refermented with a relatively high percentage of moisture, including tobacco which has been dipped or reconditioned after its first fermentation and put through a forced or artificial sweat.

Scrap.—A by-product from handling tobacco in both the unstemmed and stemmed forms, consisting chiefly of portions of tobacco leaves, except stems, which accumulate in warehouses, packing and conditioning plants, and stemmeries.

Side.—Any distinct characteristic of tobacco; or a certain phase of quality, color, or length as compared with some other phase of quality, color, or length.

Smoking-leaf.—The thin side of leaf grades having prominent fibers (considering fiber size in relation to the thickness of the leaf), and characterized by being non-elastic, low in oil, mellow, very grainy, porous, and showing a considerable amount of injury of the kind normally found in very grainy or over-ripe tobacco.

Sound.—Free of damage.

Special factor.—Any side of a grade, or characteristic of importance varying from or not covered by the specifications of the grade.

Steamdried.—The condition of unfermented tobacco as customarily prepared for storage by means of a re-drying machine or other steam-conditioning equipment.

Stem.—The mid-rib of a tobacco leaf.

Stemmed.—A form of tobacco from which the stems or mid-ribs have been removed, including both strips and strip-scrap.

Stems.—A tobacco by-product composed of the mid-ribs of tobacco leaves.

Stouts.—A term used to designate tobacco of the B group.

Strips.—The sides of tobacco leaves from which the stems have been removed.

Strip-scrap.—Stemmed scrap or stemless scrap, which is a by-product from stemming tobacco or handling strips consisting chiefly of portions of strips.

Subgrade.—Any grade modified by a special factor symbol.

Sweated.—The condition of tobacco which has passed through one or more fermentations natural to tobacco packed with a normal percentage of moisture.

Sweating.—The condition of tobacco in the process of fermentation.

Thins.—A term used to designate tobacco of the C group.

Type.—A division of a class of tobacco having certain common characteristics and closely related grades. Tobacco which has the same characteristics and corresponding qualities, colors, and lengths, shall be treated as one type, regardless of any factors of historical or geographical nature which cannot be determined by an examination of the tobacco.

Type 11.—That type of flue-cured tobacco commonly known as Western Flue-cured or Old Belt and Middle Belt Flue-cured; and produced principally in the Piedmont sections of Virginia and North Carolina and the district extending eastward to the coastal plains region. That portion of this type known as Old Belt Flue-cured, normally characterized by a heavier body and darker color shade and produced principally in the Piedmont sections of Virginia and North Carolina, may be classified as Type 11a; and that portion of the type known as Middle Belt Flue-cured, normally characterized by a thinner body and lighter color shade and produced principally in a section lying between the Piedmont and coastal plains regions of Virginia and North Carolina, may be classified as Type 11b.

Type 12.—That type of flue-cured tobacco commonly known as Eastern Flue-cured, New Belt of North Carolina Flue-cured, or Eastern Carolina Flue-cured; and produced principally in the coastal plains section of (297) North Carolina, north of the South River.

Type 13.—That type of flue-cured tobacco commonly known as Southeastern Flue-cured, South Carolina flue-

cured, or New Belt of South Carolina; and produced principally in the coastal plains section of South Carolina, and the southeastern counties of North Carolina, south of the South River.

Type 14.—That type of flue-cured tobacco commonly known as Southern Flue-cured or New Belt of Georgia, Florida, and Alabama; and produced principally in the southern section of Georgia and to some extent in Florida and Alabama.

Undried.—The condition of unfermented tobacco which has not been airdried, or steamdried.

Uniformity.—One of the elements of quality in tobacco having reference to the consistency of a lot with respect to other elements of quality or color. The following are the specifications for the several degrees of uniformity showing for each degree the percentage of a lot that may be of a *distinctly different* group, quality, or color from the run of the lot; (a) Uniform, less than 5%; (b) Harmonizing, less than 10%; (c) Unmingled, less than 20%; (d) Mingled or Unmixed, less than 30% and (e) Mixed, over 30%.

Unstemmed.—A form of tobacco from which the stems or mid-ribs have not been removed, including both whole-leaf and leaf-scrap.

Variegated.—Having a diversity of contrasting colors or tints within a leaf; including leaves which are grey, mottled, bleached, or stained, or leaves which do not blend with the normal colors of the type.

The application of these official standard grades shall be in accordance with the following rules:

Rule 1.—Each grade shall be treated as a subdivision of a particular type and whenever a grade is stated in an inspection certificate, the type shall also be stated.

Rule 2.—The determination of grades shall be based upon a thorough examination of a lot of tobacco or an official sample of the lot.

Rule 3.—In determining the grade of a lot of tobacco, the lot as a whole shall be considered, and minor irregularities which do not affect over one per cent of the tobacco shall be overlooked.

Rule 4.—Tobacco damaged under 20% shall be classed as unsound and treated as a subgrade by placing the special factor letter "U" after or above the grade mark. For example: if a lot of tobacco is under 20% damaged and otherwise meets the specifications of B4M, it shall be graded B4M-U.

Rule 5.—When a lot of unmixed tobacco is on the marginal line between two colors so that there is a question as to which is the predominant color, it shall be placed in the color with which the tobacco best corresponds (298) with respect to body and maturity.

Rule 6.—Any lot of tobacco shall be regarded as meeting the specifications of a certain grade when the tobacco is not lower in any degree of quality than stated in the specifications of such grades. The degree of uniformity specified for a particular grade governs the percentage of a lot which must meet the specifications with respect to other degrees of quality.

Rule 7.—Any lot of tobacco which clearly and fully meets the specifications of two or more grades shall be placed in the highest one of such grades; but any lot of tobacco which is on the marginal line between two or more grades so that the grade cannot be determined by applying other rules, shall be placed in the lowest grade in question.

Rule 8.—The grade assigned to any lot of tobacco shall be a true representation of the tobacco at the time of inspection and certification thereof.

Rule 9.—If, at any time, it is found that a lot of tobacco does not comply with the description and specifications of the grade previously assigned, it shall not thereafter be represented as being of such grade.

Rule 10.—Any special factor symbol, approved for the purpose by the Bureau of Agricultural Economics, may

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be used after or above a grade mark to show a peculiar side or characteristic of the tobacco.

Rule 11.—When a lot contains tobacco of two or more colors, it shall be graded in the predominant color, and, if the lot is mixed, the special factor letter M shall be used after or above the grade mark.

Rule 12.—Smoking-leaf grades in F and R colors shall be made a subgroup of leaf by substituting the letter "H" for the group letter "B" in the grade symbols.

Rule 13.—Priming grades in L, F, and G colors shall be made a subgroup of lugs by substituting the letter "P" for the group letter "X" in the grade symbols.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the official seal of the Department of Agriculture to be affixed in the City of Washington, this 7th day of August, 1936.

(signed) R. G. TUGWELL,
Acting Secretary of
Agriculture.

DEFENDANT'S EXHIBIT NO. 12.

(299)

Filed July 1, 1937

UNITED STATES DEPARTMENT
OF AGRICULTURE
Bureau of Agricultural Economics

Raleigh, N. C.
Sept. 23, 1936

**DAILY TOBACCO MARKET NEWS REPORT—
TYPE 11(b)**

The following table shows average prices by grade for tobacco on the Oxford, N. C. Market Tuesday, compared with the averages for first day of sales last season and the averages for the 1935 crop.

Averages Based on 20 or More Lots of Each Grade—
Price Quotations are in Dollars per 100 Lbs.

U. S. Grade	Sept. 22 1936	Sept. 17 1935	1935 Crop Avg.
Leaf	\$	\$	\$
B3F	33.00	—	23.50
B4F	23.00	18.00	16.00
B4R	19.00	—	13.00
B5F	14.00	—	10.00
B5R	7.25	8.25	7.00
B5GF	6.50	—	—
B6F	5.00	—	5.00
B6R	3.25	—	4.00
B6GF	2.25	—	—
Cutters			
C3L	41.00	—	38.00
C4L	40.00	28.00	34.00
C4F	39.00	—	33.00
C5L	38.00	27.00	30.00
C5F	35.00	—	29.00
Lugs			
X1L	38.00	—	29.00
X1F	36.00	26.00	27.00
X2L	34.00	—	23.00
X2LV	29.00	—	—
X2F	30.00	19.50	21.00
X3L	25.00	—	16.00
X3F	27.00	15.00	14.00
X3R	19.00	—	11.25
X4L	14.50	—	9.75
X4F	11.25	8.75	8.50
X4R	6.50	—	7.25
X4GF	7.25	—	—
X5L	7.00	—	7.00
X5F	5.00	—	5.25
Priming Lugs			
P1L	37.00	23.50	26.00
P1F	35.00	—	23.50

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P2L	33.00	19.00	20.50
P2F	32.00	19.50	19.00
P3L	25.00	13.00	13.75
P3F	23.00	12.50	12.00
P4L	14.00	8.50	8.50
P4F	11.00	7.50	7.50
P5L	5.50	5.50	5.50
P5F	4.50	5.50	5.25

Nondescript

N1X	2.00	—	3.50
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Comments: Market opened with blocked sales. Principal offerings second to fourth quality lugs and second to fifth quality priming lugs. Lugs predominated with small quantity leaf and cutters included. Compared with averages for 1935 crop, average prices higher on most grades quoted with exception of low quality leaf, lugs and priming lugs. By separate groups the approximate percentages of increase were as follows: Leaf 33%, cutters 18%, lugs 41% and priming lugs 55%.

KEY TO STANDARD GRADE MARKS FOR FLUE-CURED TOBACCO

GROUPS—A-Wrappers, B-Leaf, H-Smoking Leaf, C-Cutters, X-Lugs, P-Priming Lugs, N-Nondescript.

QUALITIES—1-First quality, 2-Second quality, 3-Third quality, 4-Fourth quality, 5-Fifth quality, 6-Sixth quality.

COLORS—L-Lemon, F-Orange, R-Mahogany, D-Dark Red, G-Green.

SPECIAL FACTORS—K-Off color, M-Mixed, T-Tips, V-Greenish Tinged, U-Unsound, W-Doubtful keeping order.

For example, B4F designates leaf, fourth quality, and orange color.

Issued 4:30 PM

UNITED STATES DEPARTMENT
(300) OF AGRICULTURE
Bureau of Agricultural Economics

Raleigh, N. C.
Sept. 24, 1936

DAILY TOBACCO MARKET NEWS REPORT—
TYPE 11(b)

The following table shows average prices by grade for tobacco on the Oxford, N. C. Market Wednesday, compared with the averages for the previous day and for the 1935 crop.

Averages Based on 20 or More Lots of Each Grade—
Price Quotations are in Dollars per 100 Lbs.

U. S. Grade	Sept. 23 1936	Sept. 22 1936	1935 Crop Avg.
Leaf	\$	\$	\$
B3F	30.00	33.00	23.50
B4F	24.50	23.00	16.00
B4R	—	19.00	13.00
B5F	13.25	14.00	10.00
B5R	9.00	7.25	7.00
B5GF	—	6.50	—
B6F	5.00	5.00	5.00
B6R	3.75	3.25	4.00
B6GF	3.50	2.25	—
Smoking Leaf			
H2F	40.00	—	30.00
H3F	34.00	—	24.00
H4F	27.00	—	17.00
H5F	16.00	—	11.00
H5R	10.75	—	8.75
H6F	6.50	—	7.00
Cutters			
C3L	—	41.00	38.00
C4L	40.00	40.00	34.00
C4F	40.00	39.00	33.00
C5L	38.00	38.00	30.00
C5F	36.00	35.00	29.00

Lugs			
X1L	38.00	38.00	29.00
X1F	38.00	36.00	27.00
X2L	35.00	34.00	23.00
X2LV	—	29.00	—
X2F	33.00	30.00	21.00
X3L	27.00	25.00	16.00
X3F	25.00	27.00	14.00
X3R	—	19.00	11.25
X4L	16.00	14.50	9.75
X4F	12.50	11.25	8.50
X4R	—	6.50	7.25
X4GF	—	7.25	—
X5L	—	7.00	7.00
X5F	7.25	5.00	5.25

Priming Lugs

P1L	35.00	37.00	26.00
P1F	35.00	35.00	23.50
P2L	32.00	33.00	20.50
P2F	32.00	32.00	19.00
P3L	24.00	25.00	13.75
P3F	20.50	23.00	12.00
P4L	13.50	14.00	8.50
P4F	10.50	11.00	7.50
P5L	6.50	5.50	5.50
P5F	4.75	4.50	5.25

Nondescript

N1X	—	2.00	3.50
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Comments: Fairly heavy sales. First to fifth quality lugs and priming lugs composed majority of offerings with small volume leaf and smoking leaf included. Several lots second quality lemon wrappers offered—selling up to \$65.00. Market firm, taken as a whole.

KEY TO STANDARD GRADE MARKS FOR FLUE-CURED TOBACCO

GROUPS—A-Wrappers, B-Leaf, H-Smoking Leaf, C-Cutters, X-Lugs, P-Priming Lugs, N-Nondescript.

QUALITIES—1-First quality, 2-Second quality, 3-Third quality, 4-Fourth quality, 5-Fifth quality, 6-Sixth quality.

COLORS—L-Lemon, F-Orange, R-Mahogany, D-Dark Red, G-Green.

SPECIAL FACTORS—K-Off color, M-Mixed, T-Tips, V-Greenish Tinged, U-Unsound, W-Doubtful keeping order.

For example, B4F designates leaf, fourth quality, and orange color.

Issued 3:00 PM

UNITED STATES DEPARTMENT
(301) OF AGRICULTURE
Bureau of Agricultural Economics

Raleigh, N. C.
Sept. 26, 1936

WEEKLY TOBACCO MARKET NEWS REPORT—
TYPE 11(b)

The following table shows average prices by grade for tobacco on the Oxford, N. C. Market this week compared with the averages for the first week of sales last season and the averages for the 1935 crop.

Averages Based on 20 or More Lots of Each Grade—
Price Quotations are in Dollars per 100 Lbs.

U. S. Grade	Week Ending Sept. 24 1936	Week Ending Sept. 19 1935	1935 Crop Avg.
Leaf	\$	\$	\$
B2F	39.00	—	31.00
B3L	35.00	—	27.00
B3F	32.00	26.00	23.50
B3R	27.00	—	21.00
B4L	29.00	—	20.00
B4F	23.50	18.00	16.00
B4R	18.00	—	13.00
B4GL	15.50	—	15.00
B4GF	11.25	—	—
B5L	15.00	—	14.00
B5F	13.75	12.00	10.00
B5FV	11.50	—	—
B5R	8.00	8.25	7.00
B5GL	9.00	—	10.25
B5GF	7.00	—	—

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B6F	5.25	—	5.00
B6R	3.50	—	4.00
B6GL	4.00	—	5.50
B6GF	2.75	—	—

Smoking Leaf

H2F	39.00	30.00	30.00
H3F	34.00	28.00	24.00
H4F	27.00	18.50	17.00
H4R	23.50	—	14.00
H5F	16.50	12.50	11.00
H5R	11.00	—	8.75
H6F	7.50	—	7.00

Cutters

C3L	42.00	—	38.00
C3F	40.00	—	36.00
C4L	40.00	28.00	34.00
C4F	39.00	28.00	33.00
C5L	38.00	27.00	30.00
C5LV	30.00	—	—
C5F	36.00	26.00	29.00

Lugs

X1L	38.00	28.00	29.00
X1F	36.00	26.00	27.00
X2L	34.00	23.00	23.00
X2LV	29.00	—	—
X2F	31.00	21.00	21.00
X2FV	26.00	—	—
X2R	27.00	—	17.50
X3L	25.00	15.50	16.00
X3LV	20.50	—	—
X3F	24.50	14.25	14.00
X3FV	18.50	—	—
X3R	18.00	—	11.25
X3GL	13.50	—	13.00
X3GF	11.75	—	—
X4L	14.25	—	9.75
X4F	11.00	8.00	8.50
X4R	7.75	—	7.25
X4GL	7.00	—	8.00
X4GF	7.50	—	—
X5L	7.00	—	7.00
X5F	5.50	5.75	5.25
X5R	4.50	—	4.50

Priming Lugs			
P1L	36.00	23.00	26.00
P1F	35.00	21.00	23.50
P2L	32.00	18.00	20.50
P2F	30.00	18.00	19.00
P3L	23.00	13.00	13.75
P3F	21.00	11.25	12.00
P3G	12.75	10.75	11.50
P4L	13.00	8.50	8.50
P4F	10.00	7.00	7.50
P4G	10.00	—	6.00
P5L	5.75	5.25	5.50
P5F	4.75	5.25	5.25
Nondescript			
N1X	2.50	4.00	3.50

Comments: Market opened Tuesday Sept. 22 with (302) blocked sales. Offerings for week principally first to fifth quality lugs and priming lugs; fair volume leaf and cutters included. Several lots second quality lemon wrappers offered—selling up to \$65.00. Average prices quoted by separate groups, compared with averages for 1935 crop were approximately higher as follows: leaf 25%, smoking leaf 42%, cutters 18%, lugs 40% and priming lugs 47%.

KEY TO STANDARD GRADE MARKS FOR FLUE-CURED TOBACCO

GROUPS—A-Wrappers, B-Leaf, H-Smoking Leaf, C-Cutters, X-Lugs, P-Priming Lugs, N-Nondescript.

QUALITIES—1-First quality, 2-Second quality, 3-Third quality, 4-Fourth quality, 5-Fifth quality, 6-Sixth quality.

COLORS—L-Lemon, F-Orange, R-Mahogany, D-Dark Red, G-Green.

SPECIAL FACTORS—K-Off color, M-Mixed, T-Tips, V-Greenish Tinged, U-Unsound, W-Doubtful keeping order.

For example, B4F designates leaf, fourth quality, and orange color.

Issued 12:15 PM

UNITED STATES DEPARTMENT
(303) OF AGRICULTURE
Bureau of Agricultural Economics

Raleigh, N. C.
Sept. 28, 1936.

DAILY TOBACCO MARKET NEWS REPORT—
TYPE 11(b)

The following table shows average prices by grade for tobacco on the Oxford, N. C. Market Monday, compared with the averages for last Friday and for this season through Thursday, September 24.

Averages Based on 20 or More Lots of Each Grade—
Price Quotations are in Dollars per 100 Lbs.

U. S. Grade	Sept. 28 1936	Sept. 25 1936	Season Through Sept. 24 1936
Leaf	\$	\$	\$
B2F	—	39.00	39.00
B3L	—	33.00	35.00
B3F	33.00	32.00	32.00
B3R	—	—	27.00
B4L	—	30.00	29.00
B4F	24.00	22.50	23.50
B4R	16.50	—	18.00
B4GL	—	—	15.50
B4GF	—	—	11.25
B5L	—	—	15.00
B5F	15.00	—	13.75
B5FV	—	—	11.50
B5R	10.00	8.00	8.00
B5GL	—	9.25	9.00
B5GF	—	8.25	7.00
B6F	7.75	6.00	5.25
B6R	5.00	3.50	3.50
B6GL	—	—	4.00
B6GF	3.75	3.25	2.75
Smoking Leaf			
H2F	—	37.00	39.00
H3F	34.00	33.00	34.00

H4F	25.00	24.00	27.00
H4R	23.50	—	23.50
H5F	—	15.50	16.50
H5R	—	9.75	11.00
H6F	—	—	7.50

Cutters

C3L	43.00	43.00	42.00
C3F	41.00	42.00	40.00
C4L	41.00	39.00	40.00
C4F	40.00	39.00	39.00
C5L	37.00	36.00	38.00
C5LV	—	—	30.00
C5F	36.00	36.00	36.00

Lugs

X1L	37.00	37.00	38.00
X1F	36.00	35.00	36.00
X2L	34.00	34.00	34.00
X2LV	—	—	29.00
X2F	32.00	31.00	31.00
X2FV	—	—	26.00
X2R	—	—	27.00
X3L	24.50	22.50	25.00
X3LV	—	—	20.50
X3F	23.00	—	24.50
X3FV	—	—	18.50
X3R	16.50	—	18.00
X3GL	—	—	13.50
X3GF	—	—	11.75
X4L	14.25	—	14.25
X4F	12.50	10.50	11.00
X4R	7.50	7.75	7.75
X4GL	—	—	7.00
X4GF	—	—	7.50
X5L	—	—	7.00
X5F	—	4.50	5.50
X5R	—	—	4.50

Priming Lugs

P1L	37.00	36.00	36.00
P1F	35.00	34.00	35.00
P2L	29.00	30.00	32.00
P2F	30.00	29.00	30.00
P3L	21.00	20.50	23.00

P3F	18.50	17.50	21.00
P3G	—	—	12.75
P4L	12.50	11.00	13.00
P4F	9.75	8.75	10.00
P4G	—	—	10.00
P5L	—	5.75	5.75
P5F	5.00	4.50	4.75

Nondescript			
N1X	—	2.50	2.50

Comments: Blocked sales. First to fifth quality lugs (304) and priming lugs composed bulk of offerings with good volume third to fifth quality leaf and cutters included. Lugs (X group) predominated.

KEY TO STANDARD GRADE MARKS FOR FLUE-CURED TOBACCO

GROUPS—A-Wrappers, B-Leaf, H-Smoking Leaf, C-Cutters, X-Lugs, P-Primings, N-Nondescript.

QUALITIES—1-First quality, 2-Second quality, 3-Third quality, 4-Fourth quality, 5-Fifth quality, 6-Sixth quality.

COLORS—L-Lemon, F-Orange, R-Mahogany, D-Dark Red, G-Green.

SPECIAL FACTORS—K-Off color, M-Mixed, T-Tips, V-Greenish Tinged, U-Unsound, W-Doubtful keeping order.

For example, B4F designates leaf, fourth quality, and orange color.

Issued 4:30 PM

UNITED STATES DEPARTMENT
(305) OF AGRICULTURE
Bureau of Agricultural Economics

Raleigh, N. C.
Sept. 29, 1936

DAILY TOBACCO MARKET NEWS REPORT—
TYPE 11(b)

The following table shows average prices by grade for tobacco on the Oxford, N. C. Market Tuesday, compared with the averages for the previous day and for this season through Thursday, September 24.

Averages Based on 20 or More Lots of Each Grade—
Price Quotations are in Dollars per 100 Lbs.

U. S. Grade	Sept. 29 1936	Sept. 28 1936	Season Through Sept. 24 1936
Leaf	\$	\$	\$
B2F	—	—	39.00
B3L	—	—	35.00
B3F	31.00	33.00	32.00
B3R	—	—	27.00
B4L	—	—	29.00
B4F	24.50	24.00	23.50
B4R	—	16.50	18.00
B4GL	—	—	15.50
B4GF	—	—	11.25
B5L	—	—	15.00
B5F	—	15.00	13.75
B5FV	—	—	11.50
B5R	8.50	10.00	8.00
B5GL	—	—	9.00
B5GF	—	—	7.00
B6F	7.00	7.75	5.25
B6R	3.50	5.00	3.50
B6GF	—	—	4.00
B6GF	—	3.75	2.75
Smoking Leaf			
H2F	39.00	—	39.00
H3F	34.00	34.00	34.00

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H4F	26.00	25.00	27.00
H4R	—	23.50	23.50
H5F	—	—	16.50
H5R	—	—	11.00
H6F	—	—	7.50

Cutters

C3L	—	43.00	42.00
C3F	43.00	41.00	40.00
C4L	40.00	41.00	40.00
C4F	40.00	40.00	39.00
C5L	38.00	37.00	38.00
C5LV	—	—	30.00
C5F	37.00	36.00	36.00

Lugs

X1L	38.00	37.00	38.00
X1F	38.00	36.00	36.00
X2L	34.00	34.00	34.00
X2LV	—	—	29.00
X2F	33.00	32.00	31.00
X2FV	—	—	26.00
X2R	—	—	27.00
X3L	27.00	24.50	25.00
X3LV	—	—	20.50
X3F	25.00	23.00	24.50
X3FV	—	—	18.50
X3R	—	16.50	18.00
X3GL	—	—	13.50
X3GF	—	—	11.75
X4L	—	14.25	14.25
X4F	14.00	12.50	11.00
X4R	—	7.50	7.75
X4GL	—	—	7.00
X4GF	—	—	7.50
X5L	—	—	7.00
X5F	—	—	5.50
X5R	—	—	4.50

Priming Lugs

P1L	38.00	37.00	36.00
P1F	35.00	35.00	35.00
P2L	32.00	29.00	32.00
P2F	31.00	30.00	30.00
P3L	24.50	21.00	23.00

P3F	21.00	18.50	21.00
P3G	—	—	12.75
P4L	12.00	12.50	13.00
P4F	10.50	9.75	10.00
P4G	—	—	10.00
P5L	—	—	5.75
P5F	5.75	5.00	4.75
Nondescript			
N1X	—	—	2.50

Comments: Fairly heavy sales. First to fifth quality (306) lugs and priming lugs continued in predominance. Wrappers sold up to \$62.00.

KEY TO STANDARD GRADE MARKS FOR FLUE-CURED TOBACCO

GROUPS—A-Wrappers, B-Leaf, H-Smoking Leaf, C-Cutters, X-Lugs, P-Priming Lugs, N-Nondescript.

QUALITIES—1-First quality, 2-Second quality, 3-Third quality, 4-Fourth quality, 5-Fifth quality, 6-Sixth quality.

COLORS—L-Lemon, F-Orange, R-Mahogany, D-Dark Red, G-Green.

SPECIAL FACTORS—K-Off color, M-Mixed, T-Tips, V-Greenish Tinged, U-Unsound, W-Doubtful keeping order.

For example, B4F designates leaf, fourth quality, and orange color.

Issued 4:00 PM

UNITED STATES DEPARTMENT
(307) OF AGRICULTURE
Bureau of Agricultural Economics

Raleigh, N. C.
Sept. 30, 1936

DAILY TOBACCO MARKET NEWS REPORT—
TYPE 11(b)

The following table shows average prices by grade for tobacco on the Oxford, N. C. Market Wednesday, compared with the averages for the previous day and for this season through Thursday, September 24.

Averages based on 20 or More Lots of Each Grade—
Price Quotations are in Dollars per 100 Lbs.

U. S. Grade	Sept. 30 1936	Sept. 29 1936	Season Through Sept. 24 1936
Leaf	\$	\$	\$
B2F	—	—	39.00
B3L	—	—	35.00
B3F	31.00	31.00	32.00
B3R	29.00	—	27.00
B4L	—	—	29.00
B4F	—	24.50	23.50
B4R	16.50	—	18.00
B4GL	—	—	15.50
B4GF	—	—	11.25
B5L	—	—	15.00
B5F	12.25	—	13.75
B5FV	—	—	11.50
B5R	8.00	8.50	8.00
B5GL	—	—	9.00
B5GF	—	—	7.00
B6F	—	7.00	5.25
B6R	—	3.50	3.50
B6GL	—	—	4.00
B6GF	—	—	2.75
Smoking Leaf			
H2F	38.00	39.00	39.00
H3F	33.00	34.00	34.00

H4F	26.00	26.00	27.00
H4R	21.00	—	23.50
H5F	—	—	16.50
H5R	—	—	11.00
H6F	—	—	7.50

Cutters

C3L	—	—	42.00
C3F	—	43.00	40.00
C4L	41.00	40.00	40.00
C4F	40.00	40.00	39.00
C5L	38.00	38.00	38.00
C5LV	—	—	30.00
C5F	36.00	37.00	36.00

Lugs

X1L	39.00	38.00	38.00
X1F	36.00	38.00	36.00
X2L	35.00	34.00	34.00
X2LV	—	—	29.00
X2F	33.00	33.00	31.00
X2FV	—	—	26.00
X2R	—	—	27.00
X3L	—	27.00	25.00
X3LV	—	—	20.50
X3F	25.00	25.00	24.50
X3FV	—	—	18.50
X3R	—	—	18.00
X3GL	—	—	13.50
X3GF	—	—	11.75
X4L	—	—	14.25
X4F	12.50	14.00	11.00
X4R	—	—	7.75
X4GL	—	—	7.00
X4GF	—	—	7.50
X5L	—	—	7.00
X5F	—	—	5.50
X5R	—	—	4.50

Priming Lugs

P1L	—	38.00	36.00
P1F	—	35.00	35.00
P2L	31.00	32.00	32.00
P2F	—	31.00	30.00
P3L	25.00	24.50	23.00

P3F	18.50	21.00	21.00
P3G	—	—	12.75
P4L	14.50	12.00	13.00
P4F	9.50	10.50	10.00
P4G	—	—	10.00
P5L	—	—	5.75
P5F	5.25	5.75	4.75
Nondescript.			
N1X	—	—	2.50

Comments. Sales medium in volume. Offerings com- (308) posed principally second to fifth quality leaf, third to fifth quality cutters, first to fourth quality lugs and second to fifth quality priming lugs. Lugs (X group) predominated.

KEY TO STANDARD GRADE MARKS FOR FLUE-CURED TOBACCO

GROUPS—A-Wrappers, B-Leaf, H-Smoking Leaf, C-Cutters, X-Lugs, P-Priming Lugs, N-Nondescript.

QUALITIES—1-First quality, 2-Second quality, 3-Third quality, 4-Fourth quality, 5-Fifth quality, 6-Sixth quality.

COLORS—L-Lemon, F-Orange, R-Mahogany, D-Dark Red, G-Green.

SPECIAL FACTORS—K-Off color, M-Mixed, T-Tips, V-Greenish Tinged, U-Unsound, W-Doubtful keeping order.

For example: B4F designates leaf, fourth quality, and orange color.

Issued 3:45 PM

UNITED STATES DEPARTMENT
(309) OF AGRICULTURE
Bureau of Agricultural Economics

Raleigh, N. C.
Oct. 1, 1936

DAILY TOBACCO MARKET NEWS REPORT—
TYPE 11(b)

The following table shows average prices by grade for tobacco on the Oxford, N. C. Market Thursday, compared with the averages for the previous day and for this season through Thursday, September 24.

Averages based on 20 or More Lots of Each Grade—
Price Quotations are in Dollars per 100 Lbs.

U. S. Grade	Oct. 1 1936	Sept. 30 1936	Season Through Sept. 24 1936
Leaf	\$	\$	\$
B2F	—	—	39.00
B3L	—	—	35.00
B3F	33.00	31.00	32.00
B3R	—	29.00	27.00
B4L	—	—	29.00
B4F	22.50	—	23.50
B4R	16.50	16.50	18.00
B4GL	—	—	15.50
B4GF	—	—	11.25
B5L	—	—	15.00
B5F	11.50	12.25	13.75
B5FV	—	—	11.50
B5R	8.50	8.00	8.00
B5GL	—	—	9.00
B5GF	—	—	7.00
B6F	—	—	5.25
B6R	—	—	3.50
B6GL	—	—	4.00
B6GF	—	—	2.75
Smoking Leaf			
H2F	—	38.00	39.00
H3F	33.00	33.00	34.00

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H4F	25.00	26.00	27.00
H4R	—	21.00	23.50
H5F	—	—	16.50
H5R	—	—	11.00
H6F	—	—	7.50

Cutters

C3L	—	—	42.00
C3F	—	—	40.00
C4L	42.00	41.00	40.00
C4F	40.00	40.00	39.00
C5L	—	38.00	38.00
C5LV	—	—	30.00
C5F	37.00	36.00	36.00

Lugs

X1L	—	39.00	38.00
X1F	37.00	36.00	36.00
X2L	—	35.00	34.00
X2LV	—	—	29.00
X2F	32.00	33.00	31.00
X2FV	—	—	26.00
X2R	—	—	27.00
X3L	—	—	25.00
X3LV	—	—	20.50
X3F	24.00	25.00	24.50
X3FV	—	—	18.50
X3R	—	—	18.00
X3GL	—	—	13.50
X3GF	—	—	11.75
X4L	—	—	14.25
X4F	12.25	12.50	11.00
X4R	—	—	7.75
X4GL	—	—	7.00
X4GF	—	—	7.50
X5L	—	—	7.00
X5F	—	—	5.50
X5R	—	—	4.50

Priming Lugs

P1L	—	—	36.00
P1F	—	—	35.00
P2L	33.00	31.00	32.00
P2F	31.00	—	30.00
P3L	—	25.00	23.00

P3F	21.00	18.50	21.00
P3G	—	—	12.75
P4L	—	14.50	13.00
P4F	10.25	9.50	10.00
P4G	—	—	10.00
P5L	—	—	5.75
P5F	5.50	5.25	4.75

Nondescript

N1X — — — 2.50

Comments: Sales continued medium in volume. First (310) to fourth quality lugs (X group) predominated offerings. Continued good demand for choice quality lugs, primings and all cutter grades.

KEY TO STANDARD GRADE MARKS FOR FLUE-CURED TOBACCO

GROUPS—A-Wrappers, B-Leaf, H-Smoking Leaf, C-Cutters, X-Lugs, P-Priming Lugs, N-Nondescript,

QUALITIES—1-First quality, 2-Second quality, 3-Third quality, 4-Fourth quality, 5-Fifth quality, 6-Sixth quality.

COLORS—L-Lemon, F-Orange, R-Mahogany, D-Dark Red, G-Green.

SPECIAL FACTORS—K-Off color, M-Mixed, T-Tips, V-Greenish Tinged, U-Unsound, W-Doubtful keeping order.

For example: B4F designates leaf, fourth quality, and orange color.

Issued 2:45 PM

UNITED STATES DEPARTMENT
(311) OF AGRICULTURE
Bureau of Agricultural Economics

Raleigh, N. C.
Oct. 3, 1936.

WEEKLY TOBACCO MARKET NEWS REPORT—
TYPE 11(b)

The following table shows average prices by grade for tobacco on the Oxford, N. C. Market this week, compared with the averages for the previous week and for this season through Thursday October 1.

Averages Based on 20 or More Lots of Each Grade—
Price Quotations are in Dollars per 100 Lbs.

U. S. Grade	Week Ending Oct. 1 1936	Week Ending Sept. 24 1936	Season Through Oct. 1 1936
Leaf	\$	\$	\$
B1F	—	—	45.00
B2L	—	—	41.00
B2F	39.00	39.00	39.00
B2R	—	—	32.00
B3L	33.00	35.00	34.00
B3LV	27.00	—	27.00
B3F	32.00	32.00	32.00
B3FV	27.00	—	26.00
B3R	27.00	27.00	27.00
B3GL	—	—	24.50
B3GF	—	—	20.50
B4L	29.00	29.00	29.00
B4LV	18.00	—	18.50
B4F	23.00	23.50	23.00
B4FV	17.50	—	17.00
B4R	—	18.00	16.00
B4GL	15.50	15.50	15.50
B4GF	13.50	11.25	12.75
B5L	17.00	15.00	16.00
B5F	11.00	13.75	12.25
B5FV	—	11.50	11.50
B5R	8.75	8.00	8.50
B5GL	9.00	9.00	9.00

B5GF	7.75	7.00	7.50
B6L	—	—	6.25
B6F	6.25	5.25	5.75
B6R	4.00	3.50	3.75
B6GL	4.00	4.00	4.00
B6GF	3.50	2.75	3.25

Smoking Leaf

H1F	—	—	42.00
H2F	38.00	39.00	38.00
H2R	35.00	—	36.00
H3F	34.00	34.00	34.00
H3R	28.00	30.00	28.00
H4F	24.50	27.00	26.00
H4R	20.50	23.50	21.50
H5F	16.00	16.50	16.00
H5R	12.25	11.00	12.00
H6F	7.00	7.50	7.25
H6R	6.00	—	5.75

Cutters

C2L	—	—	46.00
C3L	43.00	42.00	43.00
C3F	42.00	40.00	42.00
C4L	40.00	40.00	40.00
C4F	40.00	39.00	40.00
C5L	37.00	38.00	38.00
C5LV	31.00	30.00	30.00
C5F	36.00	36.00	36.00
C5FV	—	—	29.00

Lugs

X1L	37.00	38.00	38.00
X1F	36.00	36.00	36.00
X1R	33.00	—	34.00
X2L	34.00	34.00	34.00
X2LV	27.00	29.00	28.00
X2F	32.00	31.00	32.00
X2FV	—	26.00	24.00
X2R	26.00	27.00	27.00
X3L	25.00	25.00	25.00
X3LV	19.00	20.50	20.00
X3F	23.00	24.50	24.00
X3FV	18.50	18.50	18.50
X3R	16.00	18.00	16.50

X3GL	15.50	13.50	14.50
X3GF	—	11.75	13.25
X4L	13.25	14.25	14.00
X4F	12.25	11.00	11.50
X4R	8.50	7.75	8.25
X4GL	—	7.00	6.75
X4GF	7.00	7.50	7.25
X5L	—	7.00	6.75
X5F	5.25	5.50	5.50
X5R	5.00	4.50	5.00
X5GF	—	—	4.00

(312) Priming Lugs

P1L	37.50	36.00	36.00
P1F	35.00	35.00	35.00
P2L	31.00	32.00	32.00
P2F	30.00	30.00	30.00
P3L	22.00	23.00	22.00
P3F	19.00	21.00	20.00
P3G	—	12.75	13.75
P4L	12.00	13.00	12.50
P4F	9.50	10.00	9.75
P4G	9.25	10.00	9.50
P5L	6.50	5.75	6.00
P5F	5.00	4.75	5.00
P5G	4.50	—	3.75

Nondescript

N2B	1.50	—	1.50
N1X	3.00	2.50	2.75
N2X	—	—	2.00
N2G	—	1.50	1.50

Comments: Blocked sales on Monday, fairly heavy on Tuesday and medium on Wednesday and Thursday. Bulk of offerings composed principally of first to fifth quality lugs and priming lugs; third to fifth quality leaf and cutters included in increased volume. Continued good demand for choice quality lugs and priming lugs and all cutter grades. Several lots second and third quality lemon and orange wrappers offered—selling up to \$62.00 for second quality in lemon color. Compared with previous week, average prices firm, taken as a whole.

KEY TO STANDARD GRADE MARKS FOR FLUE-CURED TOBACCO

GROUPS—A-Wrappers, B-Leaf, H-Smoking Leaf, C-Cutters, X-Lugs, P-Priming Lugs, N-Nondescript.

QUALITIES—1-First quality, 2-Second quality, 3-Third quality, 4-Fourth quality, 5-Fifth quality, 6-Sixth quality.

COLORS—L-Lemon, F-Orange, R-Mahogany, D-Dark Red, G-Green.

SPECIAL FACTORS—K-Off color, M-Mixed, T-Tips, V-Greenish Tinged, U-Unsound, W-Doubtful keeping order.

For example: B4F designates leaf, fourth quality, and orange color.

Issued 10:00 AM

UNITED STATES DEPARTMENT

(313) OF AGRICULTURE

Bureau of Agricultural Economics

Raleigh, N. C.

Oct. 5, 1936.

DAILY TOBACCO MARKET NEWS REPORT— TYPE 11(b)

The following table shows average prices by grade for tobacco on the Oxford, N. C. Market Monday, compared with the averages for last Friday and for this season through Thursday, October 1.

Averages based on 20 or More Lots of Each Grade—
Price Quotations are in Dollars per 100 Lbs.

U. S. Grade	Oct. 5 1936	Oct. 2 1936	Season Through Oct. 1 1936
Leaf	.\$	\$	\$
B1F	—	—	45.00
B2L	—	—	41.00
B2F	—	—	39.00
B2R	—	—	32.00

B3L	—	—	34.00
B3LV	—	—	27.00
B3F	29.00	—	32.00
B3FV	—	—	26.00
B3R	26.00	—	27.00
B3GL	—	—	24.50
B3GF	—	—	20.50
B4L	—	—	29.00
B4LV	—	—	18.50
B4F	22.50	—	23.00
B4FV	—	—	17.00
B4R	14.25	—	16.00
B4GL	—	—	15.50
B4GF	—	—	12.75
B5L	—	—	16.00
B5F	12.00	13.25	12.25
B5FV	—	—	11.50
B5R	7.75	7.50	8.50
B5GL	—	—	9.00
B5GF	7.50	—	7.50
B6L	—	—	6.25
B6F	—	6.00	5.75
B6R	—	3.75	3.75
B6GL	—	—	4.00
B6GF	—	3.00	3.25

Smoking Leaf

H1F	—	—	42.00
H2F	38.00	37.00	38.00
H2R	—	—	36.00
H3F	31.00	31.00	34.00
H3R	26.00	—	28.00
H4F	26.00	24.00	26.00
H4R	19.00	—	21.50
H5F	15.50	—	16.00
H5R	10.75	—	12.00
H6F	—	—	7.25
H6R	—	—	5.75

Cutters

C2L	—	—	46.00
C3L	—	—	43.00
C3F	44.00	44.00	42.00
C4L	43.00	—	40.00
C4F	40.00	40.00	40.00

C5L	38.00	39.00	38.00
C5LV	—	—	30.00
C5F	37.00	37.00	36.00
C5FV	—	—	29.00
Lugs			
X1L	41.00	—	38.00
X1F	37.00	36.00	36.00
X1R	—	—	34.00
X2L	35.00	35.00	34.00
X2LV	—	—	28.00
X2F	33.00	32.00	32.00
X2FV	—	—	24.00
X2R	30.00	28.00	27.00
X3L	26.00	24.00	25.00
X3LV	—	—	20.00
X3F	23.00	22.50	24.00
X3FV	—	—	18.50
X3R	—	—	16.50
X3GL	—	—	14.50
X3GF	—	—	13.25
X4L	—	—	14.00
X4F	13.00	11.75	11.50
X4R	—	8.75	8.25
X4GL	—	—	6.75
X4GF	—	—	7.25
X5L	—	—	6.75
X5F	5.75	5.25	5.50
X5R	—	—	5.00
X5GF	—	—	4.00

(314) Priming Lugs

P1L	—	—	36.00
P1F	—	36.00	35.00
P2L	31.00	33.00	32.00
P2F	31.00	28.00	30.00
P3L	24.00	23.00	22.00
P3F	21.50	20.00	20.00
P3G	—	—	13.75
P4L	13.25	—	12.50
P4F	10.75	9.00	9.75
P4G	—	—	9.50
P5L	—	—	6.00
P5F	6.25	5.00	5.00
P5G	—	—	3.75

Nondescript			
N2B	—	—	1.50
N1X	—	—	2.75
N2X	—	—	2.00
N2G	—	—	1.50

Comments: Sales continue heavy with market blocked. First to fifth quality lugs composed bulk of offerings with good volume smoking leaf and cutters included. Priming lugs offered in decreased volume.

KEY TO STANDARD GRADE MARKS FOR FLUE-CURED TOBACCO

GROUPS—A-Wrappers, B-Leaf, H-Smoking Leaf, C-Cutters, X-Lugs, P-Priming Lugs, N-Nondescript.

QUALITIES—1-First quality, 2-Second quality, 3-Third quality, 4-Fourth quality, 5-Fifth quality, 6-Sixth quality.

COLORS—L-Lemon, F-Orange, R-Mahogany, D-Dark Red, G-Green.

SPECIAL FACTORS—K-Off color, M-Mixed, T-Tips, V-Greenish Tinged, U-Unsound, W-Doubtful keeping order.

For example: B4F designates leaf, fourth quality, and orange color.

Issued 4:15 PM

UNITED STATES DEPARTMENT
(315) OF AGRICULTURE
Bureau of Agricultural Economics

Raleigh, N. C.
Oct. 6, 1936.

DAILY TOBACCO MARKET NEWS REPORT— TYPE 11(b).

The following table shows average prices by grade for tobacco on the Oxford, N. C. Market Tuesday, compared with the averages for the previous day and for this season through Thursday, October 1.

Averages Based on 20 or More Lots of Each Grade—
Price Quotations are in Dollars per 100 Lbs.

U. S. Grade	Oct. 6 1936	Oct. 5 1936	Season Through Oct. 1 1936
Leaf	\$	\$	\$
B1F	—	—	45.00
B2L	—	—	41.00
B2F	—	—	39.00
B2R	—	—	32.00
B3L	—	—	34.00
B3LV	—	—	27.00
B3F	33.00	29.00	32.00
B3FV	—	—	26.00
B3R	—	26.00	27.00
B3GL	—	—	24.50
B3GF	—	—	20.50
B4L	—	—	29.00
B4LV	—	—	18.50
B4F	—	22.50	23.00
B4FV	—	—	17.00
B4R	16.50	14.25	16.00
B4GL	—	—	15.50
B4GF	—	—	12.75
B5L	—	—	16.00
B5F	12.25	12.00	12.25
B5FV	—	—	11.50
B5R	7.25	7.75	8.50
B5GL	—	—	9.00
B5GF	—	7.50	7.50
B6L	—	—	6.25
B6F	—	—	5.75
B6R	3.75	—	3.75
B6GL	—	—	4.00
B6GF	3.25	—	3.25
Smoking Leaf			
H1F	—	—	42.00
H2F	39.00	38.00	38.00
H2R	39.00	—	36.00
H3F	34.00	31.00	34.00

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H3R	—	26.00	28.00
H4F	26.00	26.00	26.00
H4R	21.50	19.00	21.50
H5F	—	15.50	16.00
H5R	12.00	10.75	12.00
H6F	—	—	7.25
H6R	—	—	5.75

Cutters

C2L	—	—	46.00
C3L	48.00	—	43.00
C3F	46.00	44.00	42.00
C4L	44.00	43.00	40.00
C4F	43.00	40.00	40.00
C5L	41.00	38.00	38.00
C5LV	—	—	30.00
C5F	40.00	37.00	36.00
C5FV	—	—	29.00

Lugs

X1L	41.00	41.00	38.00
X1F	39.00	37.00	36.00
X1R	—	—	34.00
X2L	38.00	35.00	34.00
X2LV	—	—	28.00
X2F	35.00	33.00	32.00
X2FV	—	—	24.00
X2R	32.00	30.00	27.00
X3L	30.00	28.00	25.00
X3LV	—	—	20.00
X3F	27.00	23.00	24.00
X3FV	—	—	18.50
X3R	21.00	—	16.50
X3GL	—	—	14.50
X3GF	—	—	13.25
X4L	19.00	—	14.00
X4F	15.50	13.00	11.50
X4R	11.00	—	8.25
X4GL	—	—	6.75
X4GF	—	—	7.25
X5L	—	—	6.75
X5F	—	5.75	5.50
X5R	—	—	5.00
X5GF	—	—	4.00

(316)	Priming Lugs			
	P1L	39.00	—	36.00
	P1F	39.00	—	35.00
	P2L	35.00	31.00	32.00
	P2F	33.00	31.00	30.00
	P3L	26.00	24.00	22.00
	P3F	24.50	21.50	20.00
	P3G	—	—	13.75
	P4L	15.00	13.25	12.50
	P4F	13.50	10.75	9.75
	P4G	—	—	9.50
	P5L	—	—	6.00
	P5F	5.75	6.25	5.00
	P5G	—	—	3.75
	Nondescript			
	N2B	—	—	1.50
	N1X	—	—	2.75
	N2X	—	—	2.00
	N2G	—	—	1.50

Comments: Sales continue heavy with market blocked. Principal offerings second to fifth quality leaf, third to fifth quality cutters, and first to fourth quality lugs and primings. Lugs (X group) predominated. Market strong on all groups with demand especially good for cutters and lugs.

KEY TO STANDARD GRADE MARKS FOR FLUE-CURED TOBACCO

GROUPS—A-Wrappers, B-Leaf, H-Smoking Leaf, C-Cutters, X-Lugs, P-Priming Lugs, N-Nondescript.

QUALITIES—1-First quality, 2-Second quality, 3-Third quality, 4-Fourth quality, 5-Fifth quality, 6-Sixth quality.

COLORS—L-Lemon, F-Orange, R-Mahogany, D-Dark Red, G-Green.

SPECIAL FACTORS—K-Off color, M-Mixed, T-Tips, V-Greenish Tinged, U-Unsound, W-Doubtful keeping order.

For example: B4F designates leaf, fourth quality, and orange color.

Issued 4:30 PM

UNITED STATES DEPARTMENT
(317) OF AGRICULTURE
Bureau of Agricultural Economics

Raleigh, N. C.
Oct. 7, 1936

DAILY TOBACCO MARKET NEWS REPORT—
TYPE 11(b)

The following table shows average prices by grade for tobacco on the Oxford, N. C. Market Wednesday, compared with the averages for last week and for this season through Thursday, October 1:

Averages based on 20 or More Lots of Each Grade—
Price Quotations are in Dollars per 100 Lbs.

U. S. Grade	Oct. 7 1936	Week Ending Oct. 1 1936	Season Through Oct. 1 1936
Leaf	\$	\$	\$
B1F	—	—	45.00
B2L	—	—	41.00
B2F	—	39.00	39.00
B2R	—	—	32.00
B3L	—	33.00	34.00
B3LV	—	27.00	27.00
B3F	32.00	32.00	32.00
B3FV	—	27.00	26.00
B3R	26.00	27.00	27.00
B3GL	—	—	24.50
B3GF	—	—	20.50
B4L	—	29.00	29.00
B4LV	—	18.00	18.50
B4F	22.50	23.00	23.00
B4FV	—	17.50	17.00
B4R	—	—	16.00
B4GL	—	15.50	15.50
B4GF	—	13.50	12.75
B5L	—	17.00	16.00
B5F	11.00	11.00	12.25
B5FV	—	—	11.50
B5R	—	8.75	8.50
B5GL	—	9.00	9.00
B5GF	6.25	7.75	7.50

B6L	—	—	6.25
B6F	6.00	6.25	5.75
B6R	3.00	4.00	3.75
B6GL	—	4.00	4.00
B6GF	3.00	3.50	3.25

Smoking Leaf

H1F	—	—	42.00
H2F	38.00	38.00	38.00
H2R	35.00	35.00	36.00
H3F	32.00	34.00	34.00
H3R	27.00	28.00	28.00
H4F	25.00	24.50	26.00
H4R	20.00	20.50	21.50
H5F	17.50	16.00	16.00
H5R	10.75	12.25	12.00
H6F	—	7.00	7.25
H6R	—	6.00	5.75

Cutters

C2L	—	—	46.00
C3L	—	43.00	43.00
C3F	43.00	42.00	42.00
C4L	41.00	40.00	40.00
C4F	41.00	40.00	40.00
C5L	40.00	37.00	38.00
C5LV	—	31.00	30.00
C5F	37.00	36.00	36.00
C5FV	—	—	29.00

Lugs

X1L	—	37.00	38.00
X1F	37.00	36.00	36.00
X1R	—	33.00	34.00
X2L	36.00	34.00	34.00
X2LV	—	27.00	28.00
X2F	33.00	32.00	32.00
X2FV	—	—	24.00
X2R	—	26.00	27.00
X3L	—	25.00	25.00
X3LV	—	19.00	20.00
X3F	25.00	23.00	24.00
X3FV	—	18.50	18.50
X3R	—	16.00	15.50
X3GL	—	15.50	14.50

X3GF	—	—	13.25
X4L	—	13.25	14.00
X4F	—	12.25	11.50
X4R	—	8.50	8.25
X4GL	—	—	6.75
X4GF	—	7.00	7.25
X5L	—	—	6.75
X5F	—	5.25	5.50
X5R	—	5.00	5.00
X5GF	—	—	4.00

(318)	Priming Lugs		
	P1L	37.00	36.00
	P1F	35.00	35.00
	P2L	31.00	32.00
	P2F	32.00 30.00	30.00
	P3L	22.00	22.00
	P3F	21.50 19.00	20.00
	P3G	—	13.75
	P4L	12.00	12.50
	P4F	9.50	9.75
	P4G	9.25	9.50
	P5L	6.50	6.00
	P5F	6.50 5.00	5.00
	P5G	4.50	3.75
	Nondescript		
	N2B	1.50	1.50
	N1X	3.00	2.75
	N2X	—	2.00
	N2G	—	1.50

Comments: Sales continued blocked. Offerings principally third to fifth quality leaf and cutters, first to fourth quality lugs and second to fifth quality primings. Lugs (X group) predominated.

KEY TO STANDARD GRADE MARKS FOR FLUE-CURED TOBACCO

GROUPS—A-Wrappers, B-Leaf, H-Smoking Leaf, C-Cutters, X-Lugs, P-Priming Lugs, N-Nondescript.

QUALITIES—1-First quality, 2-Second quality, 3-Third

quality, 4-Fourth quality, 5-Fifth quality, 6-Sixth quality.

COLORS—L-Lemon, F-Orange, R-Mahogany, D-Dark Red, G-Green.

SPECIAL FACTORS—K-Off color, M-Mixed, T-Tips, V-Greenish Tinged, U-Unsound, W-Doubtful keeping order.

For example: B4F designates leaf, fourth quality, and orange color.

Issued 5:00 PM

UNITED STATES DEPARTMENT
(319) OF AGRICULTURE
Bureau of Agricultural Economics

Raleigh, N. C.
Oct. 8, 1936

DAILY TOBACCO MARKET NEWS REPORT—
TYPE 11(b)

The following table shows average prices by grade for tobacco on the Oxford, N. C. Market Thursday, compared with the averages for last week and for this season through Thursday, October 1.

Averages based on 20 or More Lots of Each Grade—
Price Quotations are in Dollars per 100 Lbs.

U. S. Grade	Oct. 8 1936	Week Ending Oct. 1 1936	Season Through Oct. 1 1936
Leaf	\$	\$	\$
B1F	—	—	45.00
B2L	—	—	41.00
B2F	—	39.00	39.00
B2R	—	—	32.00
B3L	—	33.00	34.00
B3LV	—	27.00	27.00
B3F	—	32.00	32.00
B3FV	—	27.00	26.00

B3R	27.00	27.00	27.00
B3GL	—	—	24.50
B3GF	—	—	20.50
B4L	—	29.00	29.00
B4LV	—	18.00	18.50
B4F	—	23.00	23.00
B4FV	—	17.50	17.00
B4R	—	—	16.00
B4GL	—	15.50	15.50
B4GF	13.50	13.50	12.75
B5L	—	17.00	16.00
B5F	11.25	11.00	12.25
B5FV	—	—	11.50
B5R	—	8.75	8.50
B5GL	—	9.00	9.00
B5GF	7.25	7.75	7.50
B6L	—	—	6.25
B6F	—	6.25	5.75
B6R	3.25	4.00	3.75
B6GL	—	4.00	4.00
B6GF	3.00	3.50	3.25

Smoking Leaf

H1F	—	—	42.00
H2F	38.00	38.00	38.00
H2R	—	35.00	36.00
H3F	33.00	34.00	34.00
H3R	27.00	28.00	28.00
H4F	23.50	24.50	26.00
H4R	19.50	20.50	21.50
H5F	—	16.00	16.00
H5R	—	12.25	12.00
H6F	—	7.00	7.25
H6R	—	6.00	5.75

Cutters

C2L	—	—	46.00
C3L	—	43.00	43.00
C3F	44.00	42.00	42.00
C4L	42.00	40.00	40.00
C4F	41.00	40.00	40.00
C5L	40.00	37.00	38.00
C5LV	—	31.00	30.00
C5F	39.00	36.00	36.00
C5FV	—	—	29.00

Lugs			
X1L	39.00	37.00	38.00
X1F	38.00	36.00	36.00
X1R	—	33.00	34.00
X2L	36.00	34.00	34.00
X2LV	—	27.00	28.00
X2F	32.00	32.00	32.00
X2FV	—	—	24.00
X2R	—	26.00	27.00
X3L	29.00	25.00	25.00
X3LV	—	19.00	20.00
X3F	27.00	23.00	24.00
X3FV	—	18.50	18.50
X3R	19.00	16.00	16.50
X3GL	—	15.50	14.50
X3GF	—	—	13.25
X4L	—	13.25	14.00
X4F	13.75	12.25	11.50
X4R	10.00	8.50	8.25
X4GL	—	—	6.75
X4GF	—	7.00	7.25
X5L	—	—	6.75
X5F	6.25	5.25	5.50
X5R	—	5.00	5.00
X5GF	—	—	4.00

(320)

Priming Lugs			
P1L	—	37.00	36.00
P1F	—	35.00	35.00
P2L	—	31.00	32.00
P2F	30.00	30.00	30.00
P3L	—	22.00	22.00
P3F	22.50	19.00	20.00
P3G	—	—	13.75
P4L	12.25	12.00	12.50
P4F	10.75	9.50	9.75
P4G	—	9.25	9.50
P5L	—	6.50	6.00
P5F	6.00	5.00	5.00
P5G	—	4.50	3.75

Nondescript

N2B	—	1.50	1.50
N1X	—	3.00	2.75
N2X	—	—	2.00
N2G	—	—	1.50

Comments: Continued heavy sales. Offerings chiefly third to fifth quality leaf and cutters, first to fourth quality lugs and second to fifth quality primings. Leaf grades offered in increased volume and primings in decreased quantity. Lugs (X group) predominated.

KEY TO STANDARD GRADE MARKS FOR FLUE-CURED TOBACCO

GROUPS—A-Wrappers, B-Leaf, H-Smoking Leaf, C-Cutters, X-Lugs, P-Priming Lugs, N-Nondescript.

QUALITIES—1-First quality, 2-Second quality, 3-Third quality, 4-Fourth quality, 5-Fifth quality, 6-Sixth quality.

COLORS—L-Lemon, F-Orange, R-Mahogany, D-Dark Red, G-Green.

SPECIAL FACTORS—K-Off color, M-Mixed, T-Tips, V-Greenish Tinged, U-Unsound, W-Doubtful keeping order.

For example: B4F designates leaf, fourth quality, and orange color.

Issued 4:15 PM

UNITED STATES DEPARTMENT OF
AGRICULTURE

Bureau of Agricultural Economics

Raleigh, N. C.

Oct. 10, 1936.

WEEKLY TOBACCO MARKET NEWS REPORT—
(321) TYPE 11(b)

The following table shows average prices by grade for tobacco on the Oxford, N. C. Market this week and this season through Thursday October 8.

Averages Based on 20 or More Lots of Each Grade—
Price Quotations are in Dollars per 100 Lbs.

U. S. Grade	Week Ending Oct. 8 1936	Season Through Oct. 8 1936
Leaf	\$	\$
B1F	—	46.00
B2L	41.00	41.00
B2F	39.00	39.00
B2R	34.00	33.00
B3L	35.00	34.00
B3LV	27.00	27.00
B3F	30.00	31.00
B3FV	22.50	24.00
B3R	26.00	27.00
B3GL	—	22.00
B3GF	—	18.50
B4L	25.00	28.00
B4LV	19.00	18.50
B4F	20.00	22.00
B4FK	—	11.50
B4FV	15.50	16.50
B4R	13.50	14.75
B4GL	14.75	15.50
B4GF	10.50	11.75
B5L	—	16.00
B5LV	—	14.50
B5F	12.00	12.25
B5FV	8.25	9.75
B5R	7.00	7.75
B5D	4.75	4.00
B5GL	7.50	8.50
B5GF	6.25	6.75
B6L	—	6.75
B6F	5.25	5.50
B6R	3.50	3.75
B6D	2.50	2.50
B6GL	4.00	4.00
B6GF	3.00	3.25

Smoking Leaf

H1F	42.50	42.00
H1R	—	41.00
H2F	38.00	38.00
H2R	37.00	37.00
H3F	32.00	33.00
H3R	28.00	28.00
H4F	25.00	25.00
H4R	20.00	20.50
H5F	14.50	15.50
H5R	10.75	11.25
H6F	7.00	7.00
H6R	5.75	5.75

Cutters

C2L	49.00	47.00
C2F	50.00	48.00
C3L	46.00	44.00
C3F	44.00	43.00
C4L	43.00	41.00
C4LV	—	32.00
C4F	41.00	40.00
C5L	40.00	38.00
C5LV	33.00	31.00
C5F	38.00	37.00
C5FV	30.00	30.00

Lugs

X1L	39.00	38.00
X1F	38.00	37.00
X1R	34.00	34.00
X2L	36.00	35.00
X2LV	28.00	28.00
X2F	33.00	32.00
X2FV	24.50	24.50
X2R	30.00	28.00
X3L	28.00	26.00
X3LV	—	19.00
X3F	25.00	24.00
X3FK	—	14.50
X3FM	—	19.50
X3FV	19.00	19.00
X3R	19.00	17.50
X3GL	15.50	15.00
X3GF	13.25	13.25

X4L	17.50	15.00
X4F	13.50	12.25
X4R	10.50	9.25
X4GL	—	6.75
X4GF	8.00	7.50
X5L	—	7.00
X5F	6.25	5.75
X5R	5.25	5.00
X5GF	—	4.25

Priming Lugs

P1L	39.00	37.00
P1F	37.00	35.00
P2L	33.00	32.00
P2F	31.00	30.00
P3L	25.00	23.00
P3F	21.50	20.50
P3G	13.50	13.75
P4L	12.75	12.50
P4F	11.25	10.25
P4G	6.00	8.50
P5L	6.75	6.25
P5F	6.00	5.25
P5G	—	3.50

Nondescript

N2B	1.75	1.75
N3B	—	2.00
N1X	2.75	2.75
N2X	1.50	1.75
N2G	1.25	1.50
(322) N3G	—	1.00

Comments: Sales extremely heavy—blocking each day of week up to Thursday. Offerings consisted principally second to fifth quality leaf, third to fifth quality cutters, first to fourth quality lugs and second to fifth quality primings. Leaf and lugs composed majority of offerings with lugs (X group) predominating. Percentage of leaf offered denoted an increase and primings a decrease. Good demand continued for cutters and lugs with several lots choice quality lemon cutters selling for \$65.00. Compared with previous week average prices firm, taken as a whole. By separate groups, average prices denoted small percentages of decrease for leaf and small percentages of increase for cutters and lugs.

KEY TO STANDARD GRADE MARKS FOR FLUE-CURED TOBACCO

GROUPS—A-Wrappers, B-Leaf, H-Smoking Leaf, C-Cutters, X-Lugs, P-Priming Lugs, N-Nondescript.

QUALITIES—1-First quality, 2-Second quality, 3-Third quality, 4-Fourth quality, 5-Fifth quality, 6-Sixth quality.

COLORS—L-Lemon, F-Orange, R-Mahogany, D-Dark Red, G-Green.

SPECIAL FACTORS—K-Off color, M-Mixed, T-Tips, V-Greenish Tinged, U-Unsound, W-Doubtful keeping order.

For example: B4F designates leaf, fourth quality, and orange color.

Issued 10:00 AM

UNITED STATES DEPARTMENT
(323) OF AGRICULTURE
Bureau of Agricultural Economics

Raleigh, N. C.
Oct. 12, 1936.

DAILY TOBACCO MARKET NEWS REPORT— TYPE 11(b)

The following table shows daily average prices for orange color grades in each group on the Oxford, N. C. Market Monday October 12. These average quotations are computed on the basis of a limited number of lots and are intended to reflect only the general trend of the market.

Orange Leaf		Orange Smoking Leaf	
U. S. Grade	Average \$	U. S. Grade	Average \$
B1F	—	H1F	—
B2F	—	H2F	39.00
B3F	28.00	H3F	33.00
B4F	—	H4F	22.00
B5F	9.75	H5F	12.75
B6F	—	H6F	—

Orange Cutters		Orange Lugs	
U. S. Grade	Average	U. S. Grade	Average
	\$		\$
C1F	—	X1F	36.00
C2F	—	X2F	32.00
C3F	44.00	X3F	24.00
C4F	41.00	X4F	—
C5F	—	X5F	5.25

Orange Priming Lugs	
U. S. Grade	Average
	\$
P1F	—
P2F	—
P3F	20.50
P4F	9.00
P5F	5.00

Comments: Blocked sales. Offerings principally second to fifth quality leaf and smoking leaf, first to fifth quality lugs, and third to fifth quality cutters. Lugs (X group) predominated.

KEY TO STANDARD GRADE MARKS FOR FLUE-CURED TOBACCO

GROUPS—A-Wrappers, B-Leaf, H-Smoking Leaf, C-Cutters, X-Lugs, P-Priming Lugs, N-Nondescript.

QUALITIES—1-First quality, 2-Second quality, 3-Third quality, 4-Fourth quality, 5-Fifth quality, 6-Sixth quality.

COLORS—L-Lemon, F-Orange, R-Mahogany, D-Dark Red, G-Green.

SPECIAL FACTORS—K-Off color, M-Mixed, T-Tips, V-Greenish Tinged, U-Unsound, W-Doubtful keeping order.

For example: B4F designates leaf, fourth quality, and orange color.

Issued 3:30 PM

UNITED STATES DEPARTMENT
 (325) OF AGRICULTURE
 Bureau of Agricultural Economics

 Raleigh, N. C.
 Oct. 13, 1936.

 DAILY TOBACCO MARKET NEWS REPORT—
 TYPE 11(b)

The following table shows daily average prices for orange color grades in each group on the Oxford, N. C. Market Tuesday October 13. These average quotations are computed on the basis of a limited number of lots and are intended to reflect only the general trend of the market.

Orange Leaf		Orange Smoking Leaf	
U. S. Grade	Average	U. S. Grade	Average
	\$		\$
B1F	—	H1F	—
B2F	42.00	H2F	40.00
B3F	31.00	H3F	34.00
B4F	21.50	H4F	25.00
B5F	9.25	H5F	14.25
B6F	—	H6F	—

Orange Cutters		Orange Lugs	
U. S. Grade	Average	U. S. Grade	Average
	\$		\$
C1F	—	X1F	39.00
C2F	—	X2F	34.00
C3F	46.00	X3F	24.50
C4F	42.00	X4F	12.25
C5F	38.00	X5F	6.25

Orange Priming Lugs	
U. S. Grade	Average
	\$
P1F	—
P2F	—
P3F	19.00
P4F	—
P5F	5.25

Comments: Continued blocked sales. Principal offerings second to fifth quality smoking leaf, third to fifth quality cutters and first to fourth quality lugs. Cutters and lugs predominated with smoking leaf offered in increased quantity. Several lots choice cutters sold from \$52.00 to \$71.00.

KEY TO STANDARD GRADE MARKS FOR FLUE-CURED TOBACCO

GROUPS—A-Wrappers, B-Leaf, H-Smoking Leaf, C-Cutters, X-Lugs, P-Priming Lugs, N-Nondescript.

QUALITIES—1-First quality, 2-Second quality, 3-Third quality, 4-Fourth quality, 5-Fifth quality, 6-Sixth quality.

COLORS—L-Lemon, F-Orange, R-Mahogany, D-Dark Red, G-Green.

SPECIAL FACTORS—K-Off color, M-Mixed, T-Tips, V-Greenish Tinged, U-Unsound, W-Doubtful keeping order.

For example: B4F designates leaf, fourth quality, and orange color.

Issued 4:30 PM

UNITED STATES DEPARTMENT
(327) OF AGRICULTURE
Bureau of Agricultural Economics

Raleigh, N. C.
Oct. 15, 1936

DAILY TOBACCO MARKET NEWS REPORT— TYPE 11(b)

The following table shows daily average prices for orange color grades in each group on the Oxford, N. C. Market Thursday October 15. These average quotations are computed on the basis of a limited number of lots and are intended to reflect only the general trend of the market.

Orange Leaf		Orange Smoking Leaf	
U. S. Grade	Average	U. S. Grade	Average
	\$		\$
B1F	—	H1F	—
B2F	—	H2F	40.00
B3F	32.00	H3F	35.00
B4F	22.00	H4F	28.00
B5F	11.25	H5F	15.00
B6F	4.75	H6F	—

Orange Cutters		Orange Lugs	
U. S. Grade	Average	U. S. Grade	Average
	\$		\$
C1F	—	X1F	39.00
C2F	—	X2F	34.00
C3F	45.00	X3F	27.00
C4F	42.00	X4F	14.50
C5F	37.00	X5F	6.25

Orange Priming Lugs	
U. S. Grade	Average
	\$
P1F	—
P2F	31.00
P3F	23.00
P4F	12.00
P5F	5.75

Comments: Continued heavy sales. Bulk of offerings composed of third to fifth quality leaf, smoking leaf and cutters and first to fourth quality lugs. Lugs (X group) predominated. One lot choice quality cutters sold for \$59.00.

KEY TO STANDARD GRADE MARKS FOR FLUE-CURED TOBACCO

GROUPS—A-Wrappers, B-Leaf, H-Smoking Leaf, C-Cutters, X-Lugs, P-Priming Lugs.

QUALITIES—1-First quality, 2-Second quality, 3-Third quality, 4-Fourth quality, 5-Fifth quality, 6-Sixth quality.

COLORS—L-Lemon, F-Orange, R-Mahogany, D-Dark Red, G-Green.

SPECIAL FACTORS—K-Off color, M-Mixed, T-Tips, V-Greenish Tinged, U-Unsound, W-Doubtful keeping order.

For example: B4F designates leaf, fourth quality, and orange color.

Issued 4:00 PM

UNITED STATES DEPARTMENT

(329) OF AGRICULTURE

Bureau of Agricultural Economics.

Raleigh, N. C.

Oct. 17, 1936

WEEKLY TOBACCO MARKET NEWS REPORT—
TYPE 11(b)

The following table shows average prices by grade for tobacco on the Oxford, N. C. Market this week and this season through Thursday October 15.

Averages based on 20 or More Lots of Each Grade—
Price Quotations are in Dollars per 100 Lbs.

U. S. Grade	Week Ending Oct. 15 1936	Season Through Oct. 15 1936
Leaf	\$	\$
B1F	48.00	47.00
B2L	43.00	42.00
B2F	41.00	40.00
B2B	38.00	35.00
B3L	34.00	34.00
B3LV	25.00	27.00
B3F	32.00	31.00
B3FK	16.00	19.00

B3FV	24.00	24.00
B3R	26.00	27.00
B3GL	—	21.00
B3GF	—	19.00
B4L	28.00	28.00
B4LV	19.50	19.00
B4F	20.00	21.50
B4FK	10.50	11.00
B4FV	16.00	16.00
B4R	15.50	15.00
B4RK	—	8.50
B4D	—	8.75
B4GL	16.00	15.50
B4GF	9.50	11.00
B5L	13.25	15.00
B5LV	—	13.50
B5F	10.25	11.50
B5FK	—	8.50
B5FT	—	8.50
B5FV	9.75	9.75
B5R	6.50	7.25
B5D	4.25	4.25
B5GL	8.00	8.25
B5GF	5.75	6.50
B6L	—	6.50
B6F	4.25	5.00
B6R	2.75	3.50
B6D	1.50	2.00
B6GL	3.50	4.00
B6GF	2.75	3.00

Smoking Leaf

H1F	44.00	43.00
H1R	—	40.00
H2F	39.00	39.00
H2R	36.00	36.00
H3F	34.00	33.00
H3R	29.00	29.00
H4F	24.00	24.50
H4R	19.50	20.00
H5F	13.75	14.75
H5R	10.00	10.75
H6F	6.75	7.00
H6R	4.50	5.50

Cutters		
C1F	—	51.00
C2L	52.00	49.00
C2F	50.00	49.00
C3L	46.00	45.00
C3F	45.00	44.00
C4L	43.00	42.00
C4LV	35.00	33.00
C4F	42.00	41.00
C4FV	—	36.00
C5L	40.00	39.00
C5LV	32.00	32.00
C5F	38.00	37.00
C5FK	—	23.00
C5FV	32.00	30.00
Lugs		
X1L	41.00	39.00
X1F	39.00	37.00
X1R	—	33.00
X2L	36.00	35.00
X2LV	29.00	28.00
X2F	33.00	32.00
X2FV	27.00	25.00
X2R	31.00	29.00
X3L	28.00	26.00
X3LV	19.50	19.50
X3F	25.00	24.50
X3FK	—	14.50
X3FM	—	18.50
X3FV	18.00	18.50
X3R	17.00	17.50
X3GL	14.00	14.50
X3GF	10.25	12.50
X4L	17.00	15.50
X4F	13.00	12.50
X4R	8.75	9.00
X4GL	7.75	7.00
X4GF	6.00	7.25
X5L	7.00	7.00
X5F	6.00	5.75
X5R	4.00	4.75
X5GF	—	4.00

Priming Lugs

P1L	39.00	37.00
P1F	36.00	35.00
P2L	33.00	32.00
P2F	33.00	31.00
P3L	22.50	23.00
P3F	21.50	20.50
P3G	13.50	13.75
P4L	14.00	12.75
P4F	10.75	10.50
P4G	6.50	8.00
P5L	6.50	6.25
P5F	5.25	5.25
P5G	3.50	3.50

Nondescript

N2B	1.75	1.75
N3B	—	1.75
N1X	3.25	3.00
N2X	1.75	1.75
N2G	1.50	1.50
N3G	1.25	1.25

Comments: Sales continued heavy with market blocked on Monday and Tuesday. Principal offerings consisted of third to fifth quality leaf and cutters, first to fourth quality lugs and second to fifth quality primings. Leaf and lugs (B, H and X groups) composed bulk of offerings. Smoking leaf offered in increased and primings in decreased volume. Several lots choice quality cutters sold from \$62.00 to \$71.00. Compared with previous week, average prices firm taken as a whole with good demand denoted for all choice and fine quality grades.

KEY TO STANDARD GRADE MARKS FOR
(330) FLUE-CURED TOBACCO

GROUPS—A-Wrappers, B-Leaf, H-Smoking Leaf, C-Cutters, X-Lugs, P-Priming Lugs.

QUALITIES—1-First quality, 2-Second quality, 3-Third quality, 4-Fourth quality, 5-Fifth quality, 6-Sixth quality.

COLORS—L-Lemon, F-Orange, R-Mahogany, D-Dark Red, G-Green.

SPECIAL FACTORS—K-Off color, M-Mixed, T-Tips, V-Greenish Tinged, U-Unsound, W-Doubtful keeping order.

For example: B4F designates leaf, fourth quality, and orange color.

Issued 10:00 AM

UNITED STATES DEPARTMENT

(331) OF AGRICULTURE

Bureau of Agricultural Economics.

Raleigh, N. C.

Oct. 19, 1936

**DAILY TOBACCO MARKET NEWS REPORT—
TYPE 11(b)**

The following table shows daily average prices for orange color grades in each group on the Oxford, N. C. Market Monday, October 19. These average quotations are computed on the basis of a limited number of lots and are intended to reflect only the general trend of the market.

Orange Leaf		Orange Smoking Leaf	
U. S. Grade	Average	U. S. Grade	Average
	\$		\$
B1F	—	H1F	—
B2F	42.00	H2F	40.00
B3F	34.00	H3F	35.00
B4F	21.50	H4F	26.00
B5F	14.00	H5F	15.00
B6F	5.75	H6F	6.25

Orange Cutters		Orange Lugs	
U. S. Grade	Average	U. S. Grade	Average
	\$		\$
C1F	—	X1F	39.00
C2F	—	X2F	34.00
C3F	46.00	X3F	25.00
C4F	42.00	X4F	14.75
C5F	40.00	X5F	7.00

Orange Priming Lugs	
U. S. Grade	Average
	\$
P1F	—
P2F	—
P3F	—
P4F	13.00
P5F	7.00

Comments: Blocked sales. Offerings principally second to fifth quality leaf and smoking leaf, third to fifth quality cutters and first to fourth quality lugs. Lugs (X group) predominated. Market firm generally.

KEY TO STANDARD GRADE MARKS FOR FLUE-CURED TOBACCO

GROUPS—A-Wrappers, B-Leaf, H-Smoking Leaf, C-Cutters, X-Lugs, P-Priming Lugs.

QUALITIES—1-First quality, 2-Second quality, 3-Third quality, 4-Fourth quality, 5-Fifth quality, 6-Sixth quality.

COLORS—L-Lemon, F-Orange, R-Mahogany, D-Dark Red, G-Green.

SPECIAL FACTORS—K-Off color, M-Mixed, T-Tips, V-Greenish Tinged, U-Unsound, W-Doubtful keeping order.

For example: B4F designates leaf, fourth quality, and orange color.

Issued 3:30 PM

UNITED STATES DEPARTMENT
(333) OF AGRICULTURE
Bureau of Agricultural Economics.

Raleigh, N. C.
Oct. 20, 1936

DAILY TOBACCO MARKET NEWS REPORT— TYPE 11(b)

The following table shows daily average prices for orange color grades in each group on the Oxford, N. C.

Market Tuesday October 20. These average quotations are computed on the basis of a limited number of lots and are intended to reflect only the general trend of the market.

Orange Leaf		Orange Smoking Leaf	
U. S. Grade	Average	U. S. Grade	Average
	\$		\$
B1F	—	H1F	—
B2F	40.00	H2F	39.00
B3F	33.00	H3F	34.00
B4F	23.00	H4F	26.00
B5F	11.50	H5F	14.00
B6F	4.25	H6F	5.00

Orange Cutters		Orange Lugs	
U. S. Grade	Average	U. S. Grade	Average
	\$		\$
C1F	—	X1F	39.00
C2F	—	X2F	34.00
C3F	48.00	X3F	28.00
C4F	42.00	X4F	13.00
C5F	39.00	X5F	6.50

Orange Priming Lugs	
U. S. Grade	Average
	\$
P1F	—
P2F	—
P3F	18.50
P4F	—
P5F	5.00

Comments: Continued blocked sales. Second to fifth quality leaf and smoking leaf, third to fifth quality cutters and first to fourth quality lugs composed principal offerings. Lugs (X group) continued in predominance. Good demand shown for cutter and lug grades.

KEY TO STANDARD GRADE MARKS FOR FLUE-CURED TOBACCO

GROUPS—A-Wrappers, B-Leaf, H-Smoking Leaf, C-Cutters, X-Lugs, P-Priming Lugs.

QUALITIES—1-First quality, 2-Second quality, 3-Third quality, 4-Fourth quality, 5-Fifth quality, 6-Sixth quality.

COLORS—L-Lemon, F-Orange, R-Mahogany, D-Dark Red, G-Green.

SPECIAL FACTORS—K-Off color, M-Mixed, T-Tips, V-Greenish Tinged, U-Unsound, W-Doubtful keeping order.

For example: B4F designates leaf, fourth quality, and orange color.

Issued 3:00 PM

UNITED STATES DEPARTMENT
(335) OF AGRICULTURE
Bureau of Agricultural Economics

Raleigh, N. C.
Oct. 21, 1936

DAILY TOBACCO MARKET NEWS REPORT— TYPE 11(b)

The following table shows daily average prices for orange color grades in each group on the Oxford, N. C. Market Wednesday October 21. These average quotations are computed on the basis of a limited number of lots and are intended to reflect only the general trend of the market.

Orange Leaf		Orange Smoking Leaf	
U. S. Grade	Average	U. S. Grade	Average
	\$		\$
B1F	—	H1F	—
B2F	40.00	H2F	39.00
B3F	—	H3F	—
B4F	22.50	H4F	26.00
B5F	10.75	H5F	13.50
B6F	4.25	H6F	5.75

Orange Cutters		Orange Lugs	
U. S. Grade	Average \$	U. S. Grade	Average \$
C1F	—	X1F	38.00
C2F	—	X2F	33.00
C3F	46.00	X3F	25.00
C4F	42.00	X4F	11.75
C5F	38.00	X5F	5.50

Orange Priming Lugs	
U. S. Grade	Average \$
P1F	—
P2F	—
P3F	—
P4F	9.00
P5F	5.50

Comments: Heavy sales. Offerings consisted chiefly of second to fifth quality leaf and smoking leaf, third to fifth quality cutters and first to fourth quality lugs. Lugs (X group) predominated. One lot choice quality lemon cutters sold for \$70.00.

KEY TO STANDARD GRADE MARKS FOR FLUE-CURED TOBACCO

GROUPS—A-Wrappers, B-Leaf, H-Smoking Leaf, C-Cutters, X-Lugs, P-Priming Lugs, N-Nondescript.

QUALITIES—1-First quality, 2-Second quality, 3-Third quality, 4-Fourth quality, 5-Fifth quality, 6-Sixth quality.

COLORS—L-Lemon, F-Orange, R-Mahogany, D-Dark Red, G-Green.

SPECIAL FACTORS—K-Off color, M-Mixed, T-Tips, V-Greenish Tinged, U-Unsound, W-Doubtful keeping order.

For example: B4F designates leaf, fourth quality, and orange color.

Issued: 4:00 PM

UNITED STATES DEPARTMENT

(337) OF AGRICULTURE

Bureau of Agricultural Economics

Raleigh, N. C.

Oct. 22, 1936

DAILY TOBACCO MARKET NEWS REPORT—
TYPE 11(b)

The following table shows daily average prices for orange color grades in each group on the Oxford, N. C. Market Thursday October 22. These average quotations are computed on the basis of a limited number of lots and are intended to reflect only the general trend of the market.

Orange Leaf		Orange Smoking Leaf	
U. S. Grade	Average	U. S. Grade	Average
	\$		\$
B1F	—	H1F	—
B2F	39.00	H2F	38.00
B3F	33.00	H3F	34.00
B4F	20.00	H4F	25.00
B5F	9.75	H5F	12.50
B6F	5.25	H6F	4.75

Orange Cutters		Orange Lugs	
U. S. Grade	Average	U. S. Grade	Average
	\$		\$
C1F	—	X1F	37.00
C2F	—	X2F	33.00
C3F	—	X3F	23.50
C4F	41.00	X4F	10.50
C5F	37.00	X5F	5.75

Orange Priming Lugs	
U. S. Grade	Average
	\$
P1F	—
P2F	—
P3F	—
P4F	8.75
P5F	—

Comments: Fairly heavy sales. Offerings consisted chiefly of second to fifth quality leaf and smoking leaf, third to fifth quality cutters and first to fourth quality lugs. Lugs (X group) predominated.

KEY TO STANDARD GRADE MARKS FOR FLUE-CURED TOBACCO

GROUPS—A-Wrappers, B-Leaf, H-Smoking Leaf, C-Cutters, X-Lugs, P-Priming Lugs, N-Nondescript.

QUALITIES—1-First quality, 2-Second quality, 3-Third quality, 4-Fourth quality, 5-Fifth quality, 6-Sixth quality.

COLORS—L-Lemon, F-Orange, R-Mahogany, D-Dark Red, G-Green.

SPECIAL FACTORS—K-Off color, M-Mixed, T-Tips, V-Greenish Tinged, U-Unsound, W-Doubtful keeping order.

For example: B4F designates leaf, fourth quality, and orange color.

Issued: 2:15 PM

UNITED STATES DEPARTMENT
(339) OF AGRICULTURE
Bureau of Agricultural Economics.

Raleigh, N. C.
Oct. 24, 1936

WEEKLY TOBACCO MARKET NEWS REPORT— TYPE 11(b)

The following table shows average prices by grade for tobacco on the Oxford, N. C. Market this week and this season through Thursday October 22.

Averages Based on 20 or More Lots of Each Grade
Price Quotations are in Dollars per 100 Lbs.

U. S. Grade	Week Ending Oct. 22 1936	Season Through Oct. 22 1936
Leaf	\$	\$
B1L	—	49.00
B1F	45.00	46.00
B2L	42.00	42.00
B2F	40.00	40.00
B2R	34.00	35.00
B3L	37.00	35.00
B3LV	29.00	27.00
B3F	33.00	32.00
B3FK	—	19.00
B3FV	27.00	25.00
B3R	26.00	27.00
B3RK	—	15.00
B3GL	—	21.00
B3GF	—	19.00
B4L	27.00	28.00
B4LV	19.50	19.00
B4F	21.50	21.50
B4FK	13.50	11.75
B4FM	—	15.50
B4FT	—	16.50
B4FV	18.50	17.00
B4R	16.50	15.50
B4RK	10.25	9.50
B4D	—	9.00
B4GL	15.50	15.50
B4GF	12.90	11.25
B5L	14.50	15.00
B5LV	12.00	12.50
B5F	11.25	11.50
B5FK	—	8.25
B5FT	—	8.50
B5FV	9.00	9.50
B5R	7.50	7.25
B5RK	—	6.25
B5D	3.00	3.75
B5GL	8.00	8.00
B5GF	6.50	6.50
B6L	—	6.50

B6F	4.50	5.00
B6R	3.50	3.50
B6D	2.25	2.00
B6GL	3.50	3.75
B6GF	3.00	3.00

Smoking Leaf

H1F	43.00	43.00
H1R	—	41.00
H2F	39.00	39.00
H2R	36.00	36.00
H3F	34.00	33.00
H3R	29.00	29.00
H4F	26.00	25.00
H4R	18.50	19.50
H5F	14.25	14.50
H5R	10.00	10.50
H6F	5.50	6.50
H6R	5.00	5.25

Cutters

C1L	—	57.00
C1F	—	53.00
C2L	49.00	49.00
C2F	49.00	49.00
C3L	46.00	45.00
C3F	45.00	44.00
C4L	43.00	42.00
C4LV	—	34.00
C4F	42.00	41.00
C4FV	—	36.00
C5L	40.00	39.00
C5LV	33.00	32.00
C5F	39.00	37.00
C5FK	—	23.50
C5FV	31.00	30.50

Lugs

X1L	40.00	39.00
X1F	38.00	38.00
X1FV	—	30.00
X1R	36.00	34.00
X2L	35.00	35.00
X2LB	30.00	29.00

X2F	34.00	33.00
X2FK	—	19.50
X2FV	29.00	26.00
X2R	28.00	29.00
X3L	27.00	27.00
X3LV	—	19.50
X3F	25.00	24.50
X3FK	—	14.50
X3FM	—	18.50
X3FV	20.50	19.00
X3R	18.50	17.50
X3GL	17.50	15.00
X3GF	15.00	13.00
X4L	16.00	15.50
X4F	12.50	12.50
X4R	9.00	9.00
X4GL	10.50	8.00
X4GF	8.25	7.50
X5L	7.75	7.00
X5F	6.00	6.00
X5R	5.00	4.75
X5GF	3.75	3.75

Priming Lugs

P1L	39.00	37.00
P1F	37.00	35.00
P2L	32.00	32.00
P2F	30.00	31.00
P3L	22.00	23.00
P3F	19.50	20.50
P3G	—	13.50
P4L	12.50	12.75
P4F	9.75	10.50
P4G	6.50	7.75
P5L	7.00	6.25
P5F	5.50	5.25
P5G	—	3.75

Nondescript

N2B	1.75	1.75
N3B	—	1.75
N1X	3.00	3.00
N2X	—	1.75
N2G	1.75	1.50
N3G	1.50	1.25

Comments: Sales remained heavy—blocking on Monday and Tuesday. Principal offerings were third to sixth quality leaf, third to fifth quality smoking leaf and cutters, first to fourth quality lugs and third to fifth quality primings. Leaf grades denoted considerable increase and priming grades considerable decrease as compared with volume of leaf and primings offered for previous week. Bulk of offerings composed of leaf (B & H groups) and lugs (X group) with leaf (B group) predominating. Several lots choice and fine quality wrappers sold from \$65.00 to \$80.00 and choice and fine quality cutters from \$60.00 to \$70.00. Taken generally, average prices were firm.

KEY TO STANDARD GRADE MARKS FOR
(340) FLUE-CURED TOBACCO

GROUPS—A-Wrappers, B-Leaf, H-Smoking Leaf, C-Cutters, X-Lugs, P-Priming Lugs, N-Nondescript.

QUALITIES—1-First quality, 2-Second quality, 3-Third quality, 4-Fourth quality, 5-Fifth quality, 6-Sixth quality.

COLORS—L-Lemon, F-Orange, R-Mahogany, D-Dark Red, G-Green.

SPECIAL FACTORS—K-Off color, M-Mixed, T-Tips, V-Greenish Tinged, U-Unsound, W-Doubtful keeping order.

For example: B4F designates leaf, fourth quality, and orange color.

Issued 10:15 AM

UNITED STATES DEPARTMENT
(341) OF AGRICULTURE
Bureau of Agricultural Economics

Raleigh, N. C.
Oct. 26, 1936.

DAILY TOBACCO MARKET NEWS REPORT—
TYPE 11(b)

The following table shows daily average prices for orange color grades in each group on the Oxford, N. C.

Market Monday October 26. These average quotations are computed on the basis of a limited number of lots and are intended to reflect only the general trend of the market.

Orange Leaf		Orange Smoking Leaf	
U. S. Grade	Average	U. S. Grade	Average
	\$		\$
B1F	—	H1F	—
B2F	41.00	H2F	39.00
B3F	33.00	H3F	35.00
B4F	23.00	H4F	27.00
B5F	12.25	H5F	14.25
B6F	4.25	H6F	6.50

Orange Cutters		Orange Lugs	
U. S. Grade	Average	U. S. Grade	Average
	\$		\$
C1F	—	X1F	—
C2F	—	X2F	32.00
C3F	44.00	X3F	23.50
C4F	41.00	X4F	11.25
C5F	38.00	X5F	5.50

Comments: Blocked sales. Bulk of offerings composed of third to fifth quality leaf and smoking leaf, fourth and fifth quality cutters and first to fourth quality lugs. Leaf (B group) predominated.

KEY TO STANDARD GRADE MARKS FOR FLUE-CURED TOBACCO

GROUPS—A-Wrappers, B-Leaf, H-Smoking Leaf, C-Cutters, X-Lugs, P-Priming Lugs, N-Nondescript.

QUALITIES—1-First quality, 2-Second quality, 3-Third quality, 4-Fourth quality, 5-Fifth quality, 6-Sixth quality.

COLORS—L-Lemon, F-Orange, R-Mahogany, D-Dark Red, G-Green.

SPECIAL FACTORS—K-Off color, M-Mixed, T-Tips, V-Greenish Tinged, U-Unsound, W-Doubtful keeping order.

For example: B4F designates leaf, fourth quality, and orange color.

Issued: 3:15 PM

UNITED STATES DEPARTMENT
(343) OF AGRICULTURE
Bureau of Agricultural Economics

Raleigh, N. C.
Oct. 27, 1936.

DAILY TOBACCO MARKET NEWS REPORT— TYPE 11(b)

The following table shows daily average prices for orange color grades in each group on the Oxford, N. C. Market Tuesday October 27. These average quotations are computed on the basis of a limited number of lots and are intended to reflect only the general trend of the market.

Orange Leaf		Orange Smoking Leaf	
U. S. Grade	Average	U. S. Grade	Average
	\$		\$
B1F	—	H1F	—
B2F	41.00	H2F	39.00
B3F	33.00	H3F	34.00
B4F	22.50	H4F	26.00
B5F	11.00	H5F	14.25
B6F	4.75	H6F	7.00

Orange Cutters		Orange Lugs	
U. S. Grade	Average	U. S. Grade	Average
	\$		\$
C1F	—	X1F	38.00
C2F	—	X2F	33.00
C3F	44.00	X3F	25.00
C4F	41.00	X4F	12.25
C5F	38.00	X5F	5.75

Comments: Continued blocked sales. Principal offerings second to fifth quality leaf and smoking leaf, third to fifth quality cutters and first to fourth quality lugs. Smoking leaf offered in increased volume. Leaf (B group) predominated.

KEY TO STANDARD GRADE MARKS FOR FLUE-CURED TOBACCO

GROUPS—A-Wrappers, B-Leaf, H-Smoking Leaf, C-Cutters, X-Lugs, P-Priming Lugs, N-Nondescript.

QUALITIES—1-First quality, 2-Second quality, 3-Third quality, 4-Fourth quality, 5-Fifth quality, 6-Sixth quality.

COLORS—L-Lemon, F-Orange, R-Mahogany, D-Dark Red, G-Green.

SPECIAL FACTORS—K-Off color, M-Mixed, T-Tips, V-Greenish Tinged, U-Unsound, W-Doubtful keeping order.

For example: B4F designates leaf, fourth quality, and orange color.

Issued 3:00 PM

UNITED STATES DEPARTMENT
(345) OF AGRICULTURE
Bureau of Agricultural Economics

Raleigh, N. C.
Oct. 28, 1936.

DAILY TOBACCO MARKET NEWS REPORT— TYPE 11(b)

The following table shows daily average prices for orange color grades in each group on the Oxford, N. C. Market Wednesday October 28. These average quotations are computed on the basis of a limited number of lots and are intended to reflect only the general trend of the market.

Orange Leaf		Orange Smoking Leaf	
U. S. Grade	Average	U. S. Grade	Average
	\$		\$
B1F	46.00	H1F	44.00
B2F	44.00	H2F	40.00
B3F	35.00	H3F	34.00
B4F	22.50	H4F	26.00
B5F	11.50	H5F	14.00
B6F	5.00	H6F	6.00

Orange Cutters		Orange Lugs	
U. S. Grade	Average	U. S. Grade	Average
	\$		\$
C1F	—	X1F	39.00
C2F	—	X2F	34.00
C3F	46.00	X3F	24.00
C4F	43.00	X4F	12.25
C5F	40.00	X5F	6.00

Comments: Sales heavy. Offerings consisted chiefly of second to fifth quality leaf and smoking leaf, third to fifth quality cutters and first to fourth quality lugs. Leaf (B group) predominated. Several lots choice quality wrappers sold from \$60.00 to \$65.00 and one lot fine quality orange cutters for \$55.00. Demand good for all groups.

KEY TO STANDARD GRADE MARKS FOR FLUE-CURED TOBACCO

GROUPS—A-Wrappers, B-Leaf, H-Smoking Leaf, C-Cutters, X-Lugs, P-Priming Lugs, N-Nondescript.

QUALITIES—1-First quality, 2-Second quality, 3-Third quality, 4-Fourth quality, 5-Fifth quality, 6-Sixth quality.

COLORS—L-Lemon, F-Orange, R-Mahogany, D-Dark Red, G-Green.

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SPECIAL FACTORS—K-Off color, M-Mixed, T-Tips, V-Greenish Tinged, U-Unsound, W-Doubtful keeping order.

For example: B4F designates leaf, fourth quality, and orange color.

Issued 3:15 PM

UNITED STATES DEPARTMENT
(347) OF AGRICULTURE
Bureau of Agricultural Economics

Raleigh, N. C.
Oct. 29, 1936.

DAILY TOBACCO MARKET NEWS REPORT—
TYPE 11(b)

The following table shows daily average prices for orange color grades in each group on the Oxford, N. C. Market Thursday October 29. These average quotations are computed on the basis of a limited number of lots and are intended to reflect only the general trend of the market.

Orange Leaf		Orange Smoking Leaf	
U. S. Grade	Average	U. S. Grade	Average
	\$		\$
B1F	—	H1F	45.00
B2F	41.00	H2F	40.00
B3F	35.00	H3F	35.00
B4F	22.00	H4F	24.50
B5F	11.00	H5F	14.00
B6F	4.50	H6F	5.75

Orange Cutters		Orange Lugs	
U. S. Grade	Average	U. S. Grade	Average
	\$		\$
C1F	—	X1F	39.00
C2F	—	X2F	34.00
C3F	—	X3F	24.00
C4F	42.00	X4F	11.25
C5F	38.00	X5F	4.75

Comments: Fairly heavy sales. Second to fifth quality leaf, first to fifth quality smoking leaf, fourth and fifth quality cutters and first to fourth quality lugs principal offerings. Leaf (B group) predominated.

KEY TO STANDARD GRADE MARKS FOR FLUE-CURED TOBACCO

GROUPS—A-Wrappers, B-Leaf, H-Smoking Leaf, C-Cutters, X-Lugs, P-Priming Lugs, N-Nondescript.

QUALITIES—1-First quality, 2-Second quality, 3-Third quality, 4-Fourth quality, 5-Fifth quality, 6-Sixth quality.

COLORS—L-Lemon, F-Orange, R-Mahogany, D-Dark Red, G-Green.

SPECIAL FACTORS—K-Off color, M-Mixed, T-Tips, V-Greenish Tinged, U-Unsound, W-Doubtful keeping order.

For example: B4F designates leaf, fourth quality, and orange color.

Issued 3:15 PM

UNITED STATES DEPARTMENT
(349) OF AGRICULTURE

Bureau of Agricultural Economics

Raieigh, N. C.
Oct. 31, 1936

WEEKLY TOBACCO MARKET NEWS REPORT— TYPE 11(b)

The following table shows average prices by grade for tobacco on the Oxford, N. C. Market this week and this season through Thursday October 29.

Averages Based on 20 or More Lots of Each Grade—
Price Quotations are in Dollars per 100 Lbs.

U. S. Grade	Week Ending Oct. 29 1936	Season Through Oct. 29 1936
Wrappers		\$
A2F	—	52.00
Leaf		
B1L	50.00	50.00
B1F	47.00	46.00
B1R	—	45.00
B2L	44.00	43.00
B2F	42.00	41.00
B2R	38.00	36.00
B3L	38.00	36.00
B3LV	29.00	28.00
B3F	34.00	32.00
B3FK	—	18.00
B3FV	27.00	26.00
B3R	30.00	27.00
B3RK	—	16.50
B3GL	—	21.50
B3GF	—	19.00
B4L	27.00	28.00
B4LV	19.00	19.00
B4F	22.50	22.00
B4FK	12.00	11.75
B4FM	—	16.00
B4FT	—	16.00
B4FV	19.00	17.50
B4R	18.00	16.00
B4RK	—	9.75
B4D	—	8.75
B4GL	16.50	16.00
B4GF	13.00	11.75
B5L	15.00	15.00
B5LV	11.75	12.25
B5F	11.50	11.50
B5FK	7.25	8.00
B5FM	—	9.25
B5FT	—	8.50
B5FV	9.75	9.50
B5R	8.00	7.50
B5RK	—	6.25
B5D	5.00	4.00

B5GL	8.75	8.25
B5GF	6.50	6.50
B6L	—	6.50
B6F	4.75	5.00
B6R	3.50	3.50
B6D	2.75	2.25
B6GL	4.00	3.75
B6GF	3.25	3.00

Smoking Leaf

H1F	44.00	43.00
H1R	—	41.00
H2F	40.00	39.00
H2R	38.00	37.00
H3F	35.00	34.00
H3R	32.00	29.00
H4F	26.00	25.00
H4R	21.50	20.00
H5F	14.50	14.50
H5R	11.00	10.75
H6F	6.75	6.50
H6R	5.50	5.25

Cutters

C1L	—	57.00
C1F	—	53.00
C2L	50.00	49.00
C2F	—	50.00
C3L	46.00	45.00
C3F	45.00	44.00
C4L	43.00	42.00
C4LV	—	35.00
C4F	42.00	41.00
C4FV	—	37.00
C5L	40.00	39.00
C5LV	34.00	32.00
C5F	39.00	38.00
C5FK	—	23.50
C5FV	34.00	31.00

Lugs

X1L	39.00	39.00
X1F	39.00	38.00
X1FV	—	31.00
X1R	—	34.00
X2L	35.00	35.00

X2LV	29.00	29.00
X2F	34.00	33.00
X2FK	—	20.50
X2FV	30.00	27.00
X2R	29.00	29.00
X3L	27.00	27.00
X3LV	23.00	20.00
X3F	25.00	24.50
X3FK	—	14.00
X3FM	—	18.00
X3FV	18.50	19.00
X3R	18.50	18.00
X3GL	17.00	15.50
X3GF	11.50	13.00
X4L	14.00	15.50
X4F	12.50	12.50
X4R	9.00	9.00
X4GL	—	8.50
X4GF	7.00	7.50
X5L	7.75	7.25
X5F	5.75	5.75
X5R	4.50	4.75
X5GF	—	3.75

Priming Lugs

P1L	—	37.00
P1F	—	35.00
P2L	32.00	32.00
P2F	32.00	31.00
P3L	23.50	23.00
P3F	19.00	20.50
P3G	—	14.00
P4L	14.50	12.75
P4F	9.75	10.25
P4G	—	7.75
P5L	—	6.50
P5F	5.00	5.25
P5G	—	3.75

Nondescript

N2B	1.75	1.75
N3B	—	1.75
N1X	3.00	3.00
N2X	—	1.75
N2G	1.75	1.50
N3G	—	1.25

Comments: Heavy sales continued with market blocked on Monday and Tuesday. Bulk of offerings composed mainly of leaf, smoking leaf and lugs. Offerings contained increased volume of leaf and smoking leaf, compared with volume of similar offerings for previous week. Third to sixth quality leaf (B group) predominated. Several lots choice wrappers sold from \$60.00 to \$65.00 and several lots choice and fine cutters from \$64.00 to \$70.00. Average prices continued firm, taken generally.

**KEY TO STANDARD GRADE MARKS FOR
(350) FLUE-CURED TOBACCO**

GROUPS—A-Wrappers, B-Leaf, H-Smoking Leaf, C-Cutters, X-Lugs, P-Priming Lugs, N-Nondescript.

QUALITIES—1-First quality, 2-Second quality, 3-Third quality, 4-Fourth quality, 5-Fifth quality, 6-Sixth quality.

COLORS—L-Lemon, F-Orange, R-Mahogany, D-Dark Red, G-Green.

SPECIAL FACTORS—K-Off color, M-Mixed, T-Tips, V-Greenish Tinged, U-Unsound, W-Doubtful keeping order.

For example: B4F designates leaf, fourth quality, and orange color.

Issued 10:30 AM

UNITED STATES DEPARTMENT

(351) OF AGRICULTURE

Bureau of Agricultural Economics

Raleigh, N. C.

Nov. 2, 1936

**DAILY TOBACCO MARKET NEWS REPORT—
TYPE 11(b)**

The following table shows daily average prices for orange color grades in each group on the Oxford, N. C. Market Monday November 2. These average quotations are computed on the basis of a limited number of lots and are intended to reflect only the general trend of the market.

Orange Leaf		Orange Smoking Leaf	
U. S. Grade	Average	U. S. Grade	Average
	\$		\$
B1F	47.00	H1F	44.00
B3F	40.00	H2F	40.00
B3F	31.00	H3F	36.00
B4F	20.00	H4F	27.00
B5F	9.50	H5F	14.50
B6F	4.50	H6F	5.50

Orange Cutters		Orange Lugs	
U. S. Grade	Average	U. S. Grade	Average
	\$		\$
C1F	—	X1F	38.00
C2F	—	X2F	33.00
C3F	45.00	X3F	21.50
C4F	42.00	X4F	10.00
C5F	38.00	X5F	5.25

Comments: Blocked sales. Offerings chiefly second to fifth quality leaf and smoking leaf, third to fifth quality cutters and first to fourth quality lugs. Leaf (B group) predominated.

KEY TO STANDARD GRADE MARKS FOR FLUE-CURED TOBACCO

GROUPS—A-Wrappers, B-Leaf, H-Smoking Leaf, C-Cutters, X-Lugs, P-Priming Lugs, N-Nondescript.

QUALITIES—1-First quality, 2-Second quality, 3-Third quality, 4-Fourth quality, 5-Fifth quality, 6-Sixth quality

COLOKS—L-Lemon, F-Orange, R-Mahogany, D-Dark Red, G-Green.

SPECIAL FACTORS—K-Off color, M-Mixed, T-Tips, V-Greenish Tinged, U-Unsound, W-Doubtful keeping order.

For example: B4F designates leaf, fourth quality, and orange color.

Issued 3:00 PM

UNITED STATES DEPARTMENT
(353) OF AGRICULTURE
Bureau of Agricultural Economics

Raleigh, N. C.
Nov. 3, 1936

DAILY TOBACCO MARKET NEWS REPORT—
TYPE 11(b)

The following table shows daily average prices for orange color grades in each group on the Oxford, N. C. Market Tuesday November 3. These average quotations are computed on the basis of a limited number of lots and are intended to reflect only the general trend of the market.

Orange Leaf		Orange Smoking Leaf	
U. S. Grade	Average	U. S. Grade	Average
	\$		\$
B1F	—	H1F	—
B2F	41.00	H2F	40.00
B3F	34.00	H3F	36.00
B4F	23.50	H4F	27.00
B5F	11.50	H5F	16.00
B6F	4.75	H6F	7.50

Orange Cutters		Orange Lugs	
U. S. Grade	Average	U. S. Grade	Average
	\$		\$
C1F	—	X1F	39.00
C2F	—	X2F	34.00
C3F	46.00	X3F	24.50
C4F	42.00	X4F	11.75
C5F	39.00	X5F	5.75

Comments: Sales medium in volume. Second to fifth quality leaf and smoking leaf, third to fifth quality cutters and first to fourth quality lugs comprised majority of offerings. Leaf (B group) predominated.

KEY TO STANDARD GRADE MARKS FOR FLUE-CURED TOBACCO

GROUPS—A-Wrappers, B-Leaf, H-Smoking Leaf, C-Cutters, X-Lugs, P-Priming Lugs, N-Nondescript.

QUALITIES—1-First quality, 2-Second quality, 3-Third quality, 4-Fourth quality, 5-Fifth quality, 6-Sixth quality.

COLORS—L-Lemon, F-Orange, R-Mahogany, D-Dark Red, G-Green.

SPECIAL FACTORS—K-Off color, M-Mixed, T-Tips, V-Greenish Tinged, U-Unsound, W-Doubtful keeping order.

For example: B4F designates leaf, fourth quality, and orange color.

Issued 2:30 PM

UNITED STATES DEPARTMENT
(355) OF AGRICULTURE
Bureau of Agricultural Economics

Raleigh, N. C.
Nov. 4, 1936

DAILY TOBACCO MARKET NEWS REPORT— TYPE 11(b)

The following table shows daily average prices for orange color grades in each group on the Oxford, N. C. Market Wednesday November 4. These average quotations are computed on the basis of a limited number of lots and are intended to reflect only the general trend of the market.

Orange Leaf		Orange Smoking Leaf	
U. S. Grade	Average	U. S. Grade	Average
	\$		\$
B1F	—	H1F	—
B2F	41.00	H2F	39.00
B3F	32.00	H3F	36.00
B4F	23.50	H4F	27.00
B5F	11.25	H5F	14.50
B6F	4.00	H6F	—

Orange Cutters		Orange Lugs	
U. S. Grade	Average	U. S. Grade	Average
	\$		\$
C1F	—	X1F	39.00
C2F	—	X2F	35.00
C3F	—	X3F	22.50
C4F	42.00	X4F	12.75
C5F	38.00	X5F	—

Comments: Fairly heavy sales. Bulk of offerings composed of second to fifth quality leaf and smoking leaf, fourth and fifth quality cutters and first to fourth quality lugs. Leaf (B group) continued in predominance.

KEY TO STANDARD GRADE MARKS FOR FLUE-CURED TOBACCO

GROUPS—A-Wrap ers, B-Leaf, H-Smoking Leaf, C-Cutters, X-Lugs, L-Priming Lugs, N-Non-descript.

QUALITIES—1-First quality, 2-Second quality, 3-Third quality, 4-Fourth quality, 5-Fifth quality, 6-Sixth quality.

COLORS—L-Lemon, F-Orange, R-Mahogany, D-Dark Red, G-Green.

SPECIAL FACTORS—K-Off color, M-Mixed, T-Tips, V-Greenish Tinged, U-Unsound, W-Doubtful keeping order.

For example: B4F designates leaf, fourth quality, and orange color.

Issued 3:30 PM

UNITED STATES DEPARTMENT
(357) OF AGRICULTURE
Bureau of Agricultural Economics

Raleigh, N. C.
Nov. 5, 1936

DAILY TOBACCO MARKET NEWS REPORT—
TYPE 11(b)

The following table shows daily average prices for orange color grades in each group on the Oxford, N. C. Market Thursday November 5. These average quotations are computed on the basis of a limited number of lots and are intended to reflect only the general trend of the market.

Orange Leaf		Orange Smoking Leaf	
U. S. Grade	Average	U. S. Grade	Average
	\$		\$
B1F	50.00	H1F	—
B2F	41.00	H2F	39.00
B3F	33.00	H3F	34.00
B4F	21.00	H4F	25.00
B5F	12.50	H5F	15.00
B6F	4.75	H6F	7.00

Orange Cutters		Orange Lugs	
U. S. Grade	Average	U. S. Grade	Average
	\$		\$
C1F	—	X1F	38.00
C2F	—	X2F	33.00
C3F	45.00	X3F	23.50
C4F	43.00	X4F	11.50
C5F	39.00	X5F	6.25

Comments: Sales fairly heavy. Second to fifth quality leaf and smoking leaf, fourth and fifth quality cutters and first to fourth quality lugs composed bulk of offerings. Leaf (B group) predominated.

KEY TO STANDARD GRADE MARKS FOR FLUE-CURED TOBACCO

GROUPS—A-Wrappers, B-Leaf, H-Smoking Leaf, C-Cutters, X-Lugs, P-Priming Lugs, N-Nondescript.

QUALITIES—1-First quality, 2-Second quality, 3-Third quality, 4-Fourth quality, 5-Fifth quality, 6-Sixth quality.

COLORS—L-Lemon, F-Orange, R-Mahogany, D-Dark Red, G-Green.

SPECIAL FACTORS—K-Off color, M-Mixed, T-Tips, V-Greenish Tinged, U-Unsound, W-Doubtful keeping order.

For example: B4F designates leaf, fourth quality, and orange color.

Issued 3:30 PM

UNITED STATES DEPARTMENT
(359) OF AGRICULTURE
Bureau of Agricultural Economics

Raleigh, N. C.
Nov. 7, 1936.

WEEKLY TOBACCO MARKET NEWS REPORT— TYPE 11(b)

The following table shows average prices by grade for tobacco on the Oxford, N. C. Market this week and this season through Thursday November 5.

Averages Based on 20 or More Lots of Each Grade—
Price Quotations are in Dollars per 100 Lbs.

U. S. Grade	Week Ending Nov. 5 1936	Season Through Nov. 5 1936
	\$	\$
Wrappers		
A2L	—	58.00
A2F	56.00	54.00

Leaf

B1L	48.00	49.00
B1F	48.00	47.00
B1R	—	45.00
B2L	43.00	43.00
B2F	41.00	41.00
B2R	37.00	36.00
B3L	36.00	36.00
B3LV	30.00	28.00
B3F	33.00	32.00
B3FK	22.00	19.00
B3FV	26.00	26.00
B3R	29.00	28.00
B3RK	—	17.00
B3D	—	22.50
B3GL	—	22.00
B3GF	—	19.50
B4L	28.00	28.00
B4LV	22.00	20.00
B4F	22.50	22.00
B4FK	13.25	12.00
B4FM	—	15.50
B4FT	—	17.00
B4FV	18.50	18.00
B4R	17.00	16.50
B4RK	—	11.00
B4D	—	8.75
B4GL	14.75	15.50
B4GF	12.50	11.75
B5L	15.00	15.00
B5LV	11.75	12.25
B5F	11.50	11.50
B5FK	—	7.75
B5FM	—	9.25
B5FT	—	9.00
B5FV	9.50	9.50
B5R	8.75	7.75
B5RK	—	6.25
B5D	6.00	4.50
B5GL	8.75	8.50
B5GF	6.50	6.50
B5GD	—	3.00
B6L	—	6.50
B6F	4.50	4.75

B6R	3.75	3.50
B6D	2.50	2.25
B6GL	4.00	3.75
B6GF	3.25	3.00

Smoking Leaf

H1F	44.00	43.00
H1R	—	41.00
H2F	40.00	39.00
H2R	38.00	37.00
H3F	35.00	34.00
H3R	31.00	30.00
H4F	26.00	25.00
H4R	20.00	20.00
H5F	15.00	14.75
H5R	11.00	10.75
H6F	6.50	6.50
H6R	6.00	5.50

Cutters

C1L	—	57.00
C1F	—	53.00
C2L	—	49.00
C2F	49.00	50.00
C3L	46.00	45.00
C3F	45.00	44.00
C4L	43.00	42.00
C4LV	—	35.00
C4F	42.00	41.00
C4FV	—	36.00
C5L	40.00	39.00
C5LV	—	32.00
C5F	39.00	38.00
C5FK	—	24.00
C5FV	—	31.00

Lugs

X1L	40.00	39.00
X1F	38.00	38.00
X1FV	—	31.00
X1R	—	34.00
X2L	35.00	35.00
X2LV	29.00	29.00
X2F	33.00	33.00
X2FK	—	20.00

X2FV	31.00	27.00
X2R	28.00	29.00
X3L	26.00	27.00
X3LV	23.50	21.00
X3F	23.00	24.50
X3FK	—	14.25
X3FM	—	18.00
X3FV	18.50	19.00
X3R	17.00	18.00
X3GL	—	15.50
X3GF	—	12.75
X4L	15.50	15.50
X4F	11.25	12.25
X4R	8.00	9.00
X4GL	—	8.25
X4GF	—	7.50
X5L	6.00	7.00
X5F	5.75	5.75
X5R	4.00	4.75
X5GF	—	3.75

Priming Lugs

P1L	—	37.00
P1F	—	35.00
P2L	—	32.00
P2F	—	31.00
P3L	—	23.00
P3F	20.00	20.50
P3G	—	14.00
P4L	—	12.75
P4F	8.50	10.25
P4G	—	7.75
P5L	—	6.50
P5F	5.00	5.25
P5G	—	3.75

Nondescript

N2B	2.00	1.75
N3B	—	1.75
N1X	—	3.00
N2X	—	1.75
N2G	2.25	1.75
N3G	—	1.25

Comments: Sales continued heavy with market blocked

on Monday and fairly heavy remainder of week. Offerings consisted chiefly of third to sixth quality leaf, second to fifth quality smoking leaf and second to fourth quality lugs. Leaf (B group) continued in predominance. Several lots fine quality wrappers sold from \$60.00 to \$65.00 and several lots choice and fine quality cutters from \$60.00 to \$66.00. Compared with last week, average prices firm generally.

**KEY TO STANDARD GRADE MARKS FOR
(360) FLUE-CURED TOBACCO**

GROUPS—A-Wrappers, B-Leaf, H-Smoking Leaf, C-Cutters, X-Lugs, P-Priming Lugs, N-Nondescript.

QUALITIES—1-First quality, 2-Second quality, 3-Third quality, 4-Fourth quality, 5-Fifth quality, 6-Sixth quality.

COLORS—L-Lemon, F-Orange, R-Mahogany, D-Dark Red, G-Green.

SPECIAL FACTORS—K-Off color, M-Mixed, T-Tips, V-Greenish Tinged, U-Unsound, W-Doubtful keeping order.

For example: B4F designates leaf, fourth quality, and orange color.

Issued 10:30 AM

UNITED STATES DEPARTMENT
(361) OF AGRICULTURE
Bureau of Agricultural Economics

Raleigh, N. C.
Nov. 10, 1936.

**DAILY TOBACCO MARKET NEWS REPORT—
TYPE 11(b)**

The following table shows daily average prices for orange color grades in each group on the Oxford, N. C. Market Monday November 9. These average quotations are computed on the basis of a limited number of lots and are intended to reflect only the general trend of the market.

**Orange
Leaf**
U. S.
Grade Average

	\$	
B1F	—	
B2F	43.00	
B3F	37.00	
B4F	27.00	
B5F	15.50	
B6F	—	

**Orange
Smoking Leaf**
U. S.
Grade Average

	\$	
H1F	—	
H2F	—	
H3F	35.00	
H4F	27.00	
H5F	17.00	
H6F	—	

**Orange
Cutters**
U. S.
Grade Average

	\$	
C1F	—	
C2F	—	
C3F	—	
C4F	—	
C5F	—	

**Orange
Lugs**
U. S.
Grade Average

	\$	
X1F	38.00	
X2F	34.00	
X3F	26.00	
X4F	12.50	
X5F	—	

Note: Tobacco on The Oxford, N. C. Market is officially graded only at the following warehouses: Banner, Owens No. 1 and Owens No. 2.

Comments: Blocked sales. Principal offerings were second to fifth quality leaf, third to fifth quality smoking leaf and first to fourth quality lugs. Leaf (B group) predominated.

KEY TO STANDARD GRADE MARKS FOR FLUE-CURED TOBACCO

GROUPS—A-Wrappers, B-Leaf, H-Smoking Leaf, C-Cutters, X-Lugs, P-Priming Lugs, N-Non-descript.

QUALITIES—1-First quality, 2-Second quality, 3-Third quality, 4-Fourth quality, 5-Fifth quality, 6-Sixth quality.

COLORS—L-Lemon, F-Orange, R-Mahogany, D-Dark Red, G-Green.

SPECIAL FACTORS—K-Off color, M-Mixed, T-Tips, V-Greenish Tinged, U-Unsound, W-Doubtful keeping order.

For example: B4F designates leaf, fourth quality, and orange color.

Issued 1:30 PM

UNITED STATES DEPARTMENT
(363) OF AGRICULTURE
Bureau of Agricultural Economics

Raleigh, N. C.
Nov. 11, 1936.

**DAILY TOBACCO MARKET NEWS REPORT—
TYPE 11(b)**

The following table shows daily average prices for orange color grades in each group on the Oxford, N. C. Market Tuesday November 10. These average quotations are computed on the basis of a limited number of lots and are intended to reflect only the general trend of the market.

Orange Leaf		Orange Smoking Leaf	
U. S.		U. S.	
Grade	Average	Grade	Average
	\$		\$
B1F	—	H1F	—
B2F	39.00	H2F	38.00
B3F	31.00	H3F	32.00
B4F	18.50	H4F	22.00
B5F	9.50	H5F	11.00
B6F	3.75	H6F	5.00

Orange Cutters		Orange Lugs	
U. S.		U. S.	
Grade	Average	Grade	Average
	\$		\$
C1F	—	X1F	38.00
C2F	—	X2F	30.00
C3F	—	X3F	21.50
C4F	41.00	X4F	9.50
C5F	38.00	X5F	4.50

300 HENRY A. WALLACE, SECRETARY, ET AL., APPELLANTS,

Note: Tobacco on the Oxford, N. C. Market is officially graded only at the following warehouses: Banner, Owens No. 1 and Owens No. 2.

Comments: Sales heavy. Offerings consisted chiefly of third to fifth quality leaf, second to sixth quality smoking leaf and first to fifth quality lugs. Leaf (B group) continued in predominance.

KEY TO STANDARD GRADE MARKS FOR FLUE-CURED TOBACCO

GROUPS—A-Wrappers, B-Leaf, H-Smoking Leaf, C-Cutters, X-Lugs, P-Priming Lugs, N-Nondescript.

QUALITIES—1-First quality, 2-Second quality, 3-Third quality, 4-Fourth quality, 5-Fifth quality, 6-Sixth quality.

COLORS—L-Lemon, F-Orange, R-Mahogany, D-Dark Red, G-Green.

SPECIAL FACTORS—K-Off color, M-Mixed, T-Tips, V-Greenish Tinged, U-Unsound, W-Doubtful keeping order.

For example: B4F designates leaf, fourth quality, and orange color.

Issued 3:00 PM

UNITED STATES DEPARTMENT
(365) OF AGRICULTURE
Bureau of Agricultural Economics.

Raleigh, N. C.
Nov. 12, 1936.

DAILY TOBACCO MARKET NEWS REPORT— TYPE 11(b)

The following table shows daily average prices for orange color grades in each group on the Oxford, N. C. Market Wednesday November 11. These average quotations are computed on the basis of a limited number of lots and are intended to reflect only the general trend of the market.

Orange Leaf		Orange Smoking Leaf	
U. S. Grade Average		U. S. Grade Average	
	\$		\$
B1F	51.00	H1F	—
B2F	42.00	H2F	39.00
B3F	33.00	H3F	35.00
B4F	21.00	H4F	26.00
B5F	13.75	H5F	15.00
B6F	5.25	H6F	—

Orange Cutters		Orange Lugs	
U. S. Grade Average		U. S. Grade Average	
	\$		\$
C1F	—	X1F	38.00
C2F	—	X2F	32.00
C3F	—	X3F	21.00
C4F	—	X4F	10.50
C5F	37.00	X5F	—

Note: Tobacco on the Oxford, N. C. Market is—officially graded only at the following warehouses: Banner, Owens No. 1 and Owens No. 2.

Comments: Sales fairly heavy. Third to fifth quality leaf, second to sixth quality smoking leaf and first to fifth quality lugs composed bulk of offerings. Leaf (B group) predominated.

KEY TO STANDARD GRADE MARKS FOR FLUE-CURED TOBACCO

GROUPS—A-Wrappers, B-Leaf, H-Smoking Leaf, C-Cutters, X-Lugs, P-Priming Lugs, N-Nondescript.

QUALITIES—1-First quality, 2-Second quality, 3-Third quality, 4-Fourth quality, 5-Fifth quality, 6-Sixth quality.

COLORS—L-Lemon, F-Orange, R-Mahogany, D-Dark Red, G-Green.

302 HENRY A. WALLACE, SECRETARY, ET AL., APPELLANTS,

SPECIAL FACTORS—K-Off color, M-Mixed, T-Tips,
V-Greenish Tinged, U-Unsound, W-Doubtful keeping
order.

For example: B4F designates leaf, fourth quality, and
orange color.

Issued 12:15 PM

UNITED STATES DEPARTMENT

(367) OF AGRICULTURE

Bureau of Agricultural Economics

Raleigh, N. C.

Nov. 14, 1936

WEEKLY TOBACCO MARKET NEWS REPORT—
TYPE 11(b)

The following table shows average prices by grade for
tobacco on the Oxford, N. C. Market this week and this
season through Thursday November 12.

Averages Based on 20 or More Lots of Each Grade—
Price Quotations are in Dollars per 100 Lbs.

U. S. Grade	Week Ending Nov. 12 1936	Season Through Nov. 12 1936
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Wrappers	\$	\$
A2L	—	58.00
A2F	—	54.00
Leaf		
B1L	—	49.00
B1F	50.00	47.00
B1R	—	45.00
B2L	41.00	42.00
B2F	40.00	41.00
B2R	38.00	36.00
B3L	35.00	36.00
B3LV	28.00	28.00
B3F	33.00	33.00
B3FK	—	19.00
B3FV	28.00	26.00
B3R	27.00	28.00

B3RK	—	17.50
B3D	—	23.00
B3GL	—	22.50
B3GF	—	19.50
B4L	28.00	28.00
B4LV	22.50	20.00
B4F	21.00	22.00
B4FK	14.50	12.50
B4FM	—	16.00
B4FT	—	17.50
B4FV	16.00	17.50
B4R	17.50	16.50
B4RK	—	11.25
B4D	—	10.50
B4GL	15.00	15.50
B4GF	13.25	12.00
B5L	15.50	15.00
B5LV	—	12.25
B5F	11.25	11.50
B5FK	—	8.00
B5FM	—	9.25
B5FT	—	8.75
B5FV	9.00	9.50
B5R	7.50	7.50
B5RK	—	6.25
B5RT	—	7.00
B5RV	—	5.00
B5D	5.75	4.75
B5GL	9.50	8.50
B5GF	6.75	6.50
B5GD	—	3.00
B6L	—	6.50
B6F	4.25	4.75
B6R	3.50	3.50
B6D	3.00	2.50
B6GL	4.25	4.00
B6GF	3.25	3.00
B6GD	—	2.25
Smoking Leaf		
H1F	44.00	44.00
H1R	—	41.00
H2F	39.00	39.00
H2R	37.00	37.00
H3F	34.00	34.00

**KEY TO STANDARD GRADE MARKS FOR
(368) FLUE-CURED TOBACCO**

GROUPS—A-Wrappers, B-Leaf, H-Smoking Leaf, C-Cutters, X-Lugs, P-Priming Lugs, N-Nondescript.

QUALITIES—1-First quality, 2-Second quality, 3-Third quality, 4-Fourth quality, 5-Fifth quality, 6-Sixth quality.

COLORS—L-Lemon, F-Orange, R-Mahogany, D-Dark Red, G-Green.

SPECIAL FACTORS—K-Off color, M-Mixed, T-Tips, V-Greenish Tinged, U-Unsound, W-Doubtful keeping order.

For example: B4F designates leaf, fourth quality, and orange color.

Issued 10:30 AM

**UNITED STATES DEPARTMENT
(369) OF AGRICULTURE**
Bureau of Agricultural Economics

Raleigh, N. C.
Nov. 17, 1936

**DAILY TOBACCO MARKET NEWS REPORT—
TYPE 11(b)**

The following table shows daily average prices for orange color grades in each group on the Oxford, N. C. Market Monday November 16. These average quotations are computed on the basis of a limited number of lots and are intended to reflect only the general trend of the market.

Orange Leaf		Orange Smoking Leaf	
U. S. Grade	Average	U. S. Grade	Average
	\$		\$
B1F	—	H1F	—
B2F	40.00	H2F	39.00
B3F	33.00	H3F	33.00
B4F	20.00	H4F	22.50
B5F	11.00	H5F	14.25
B6F	4.00	H6F	6.75

Orange Cutters		Orange Lugs	
U. S. Grade	Average	U. S. Grade	Average
	\$		\$
C1F	—	X1F	—
C2F	—	X2F	32.00
C3F	—	X3F	21.00
C4F	—	X4F	11.00
C5F	—	X5F	—

Note: Tobacco on the Oxford, N. C. Market is officially graded only at the following warehouses: Banner, Owens No. 1 and Owens No. 2.

Comments: Blocked sales. Offerings consisted chiefly of leaf, smoking leaf and lugs. Third to fifth quality leaf (B group) predominated.

KEY TO STANDARD GRADE MARKS FOR FLUE-CURED TOBACCO

GROUPS—A-Wrappers, B-Leaf, H-Smoking Leaf, C-Cutters, X-Lugs, P-Priming Lugs, N-Nondescript.

QUALITIES—1-First quality, 2-Second quality, 3-Third quality, 4-Fourth quality, 5-Fifth quality, 6-Sixth quality.

COLORS—L-Lemon, F-Orange, R-Mahogany, D-Dark Red, G-Green.

SPECIAL FACTORS—K-Off color, M-Mixed, T-Tips, V-Greenish Tinged, U-Unsound, W-Doubtful keeping order.

For example: B4F designates leaf, fourth quality, and orange color.

Issued 1:30 PM

UNITED STATES DEPARTMENT
(371) OF AGRICULTURE
Bureau of Agricultural Economics

Raleigh, N. C.
Nov. 18, 1936

DAILY TOBACCO MARKET NEWS REPORT—
TYPE 11(b)

The following table shows daily average prices for orange color grades in each group on the Oxford, N. C. Market Tuesday, November 17. These average quotations are computed on the basis of a limited number of lots and are intended to reflect only the general trend of the market.

Orange Leaf		Orange Smoking Leaf	
U. S. Grade	Average	U. S. Grade	Average
	\$		\$
B1F	—	H1F	—
B2F	43.00	H2F	37.00
B3F	34.00	H3F	34.00
B4F	22.50	H4F	23.50
B5F	9.75	H5F	13.50
B6F	4.75	H6F	—

Orange Cutters		Orange Lugs	
U. S. Grade	Average	U. S. Grade	Average
	\$		\$
C1F	—	X1F	—
C2F	—	X2F	30.00
C3F	—	X3F	22.00
C4F	—	X4F	11.50
C5F	—	X5F	5.50

Note: Tobacco on the Oxford, N. C. Market officially graded only at the following warehouses: Banner, Owens No. 1 and Owens No. 2.

Comments: Continued blocked sales. Second to sixth quality leaf and smoking leaf and second to fifth quality

lugs comprise majority of offerings. Leaf (B group) predominated.

KEY TO STANDARD GRADE MARKS FOR FLUE-CURED TOBACCO

GROUPS—A-Wrappers, B-Leaf, H-Smoking Leaf, C-Cutters, X-Lugs, P-Priming Lugs, N-Nondescript.

QUALITIES—1-First quality, 2-Second quality, 3-Third quality, 4-Fourth quality, 5-Fifth quality, 6-Sixth quality.

COLORS—L-Lemon, F-Orange, R-Mahogany, D-Dark Red, G-Green.

SPECIAL FACTORS—K-Off color, M-Mixed, T-Tips, V-Greenish Tinged, U-Unsound, W-Doubtful keeping order.

For example: B4F designates leaf, fourth quality, and orange color.

Issued 12:15 P. M.

UNITED STATES DEPARTMENT
(373) OF AGRICULTURE
Bureau of Agricultural Economics

Raleigh, N. C.
Nov. 19, 1936.

DAILY TOBACCO MARKET NEWS REPORT— TYPE 11(b)

The following table shows daily average prices for orange color grades in each group on the Oxford, N. C. Market Wednesday November 18. These average quotations are computed on the basis of a limited number of lots and are intended to reflect only the general trend of the market.

H3R	30.00	30.00
H4F	24.00	25.00
H4R	19.50	20.00
H5F	13.50	14.50
H5R	9.50	10.50
H6F	6.00	6.50
H6R	4.50	3.25

Cutters

C1L	—	57.00
C1F	—	53.00
C2L	—	49.00
C2F	—	50.00
C3L	—	45.00
C3F	46.00	44.00
C4L	42.00	42.00
C4LV	—	33.00
C4F	41.00	41.00
C4FV	—	36.00
C5L	39.00	39.00
C5LV	—	33.00
C5F	38.00	38.00
C5FK	—	23.50
C5FV	—	31.00

Lugs

X1L	39.00	39.00
X1F	37.00	38.00
X1FV	—	31.00
X1R	—	34.00
X2L	34.00	35.00
X2LV	28.00	29.00
X2F	32.00	33.00
X2FK	—	21.00
X2FM	—	27.00
X2FV	—	28.00
X2R	27.00	29.00
X3L	23.50	26.50
X3LV	—	20.50
X3F	22.50	24.50
X3FK	—	14.25
X3FM	—	17.50
X3FV	16.50	19.00
X3R	15.00	17.50
X3GL	—	15.50

X3GF	—	12.75
X4L	14.25	15.50
X4F	10.50	12.25
X4R	7.00	8.75
X4GL	—	8.25
X4GF	6.75	7.25
X5L	7.00	7.00
X5F	5.25	5.75
X5R	—	4.50
X5GL	—	5.50
X5GF	—	4.00

Priming Lugs

P1L	—	37.00
P1F	—	35.00
P2L	—	32.00
P2F	—	31.00
P3L	—	23.00
P3F	18.50	20.50
P3G	—	13.75
P4L	—	12.75
P4F	7.50	10.00
P4G	—	7.75
P5L	—	6.50
P5F	—	5.25
P5G	—	3.75

Nondescript

N2B	2.00	1.75
N3B	—	1.50
N1X	1.75	3.00
N2X	—	1.75
N2G	1.75	1.75
N3G	—	1.25

Comments: Sales blocked Monday and Tuesday and fairly heavy remainder of week. Leaf, smoking leaf and lugs composed bulk of offerings. Third to sixth quality leaf (B group) predominated. Several lots choice and fine quality leaf sold from \$54.00 to \$61.00. Compared with last week, average prices firm.

Note: Tobacco on the Oxford, N. C. Market is officially graded only at the following warehouses: Banner, Owens No. 1 and Owens No. 2

Orange Leaf		Orange Smoking Leaf	
U. S. Grade	Average	U. S. Grade	Average
	\$		\$
B1F	—	H1F	—
B2F	40.00	H2F	38.00
B3F	29.00	H3F	33.00
B4F	17.50	H4F	23.00
B5F	8.75	H5F	12.50
B6F	4.00	H6F	—

Orange Cutters		Orange Lugs	
U. S. Grade	Average	U. S. Grade	Average
	\$		\$
C1F	—	X1F	—
C2F	—	X2F	29.00
C3F	—	X3F	19.50
C4F	—	X4F	10.25
C5F	36.00	X5F	—

Note: Tobacco on the Oxford, N. C. Market officially graded only at the following warehouses: Banner, Owens No. 1 and Owens No. 2.

Comments: Sales fairly heavy. Bulk of offerings composed of second to sixth quality leaf, smoking leaf and second to fourth quality lugs. Leaf (B group) continued in predominance. Several lots choice quality leaf sold from \$59.00 to \$64.00.

KEY TO STANDARD GRADE MARKS FOR FLUE-CURED TOBACCO

GROUPS—A-Wrappers, B-Leaf, H-Smoking Leaf, C-Cutters, X-Lugs, P-Priming Lugs, N-Nondescript.

QUALITIES—1-First quality, 2-Second quality, 3-Third quality, 4-Fourth quality, 5-Fifth quality, 6-Sixth quality.

COLORS—L-Lemon, F-Orange, R-Mahogany, D-Dark Red, G-Green.

SPECIAL FACTORS—K-Off color, M-Mixed, T-Tips, V-Greenish Tinged, U-Unsound, W-Doubtful keeping order.

For example: B4F designates leaf, fourth quality, and orange color.

Issued 1:15 PM

UNITED STATES DEPARTMENT
(375) OF AGRICULTURE
Bureau of Agricultural Economics

Raleigh, N. C.
Nov. 21, 1936

WEEKLY TOBACCO MARKET NEWS REPORT—
TYPE 11(b)

The following table shows average prices by grade for tobacco on the Oxford, N. C. market this week and this season through Thursday November 19.

Averages Based on 20 or More Lots of Each Grade—
Price Quotations are in Dollars per 100 Lbs.

U. S. Grade	Week Ending Nov. 19 1936	Season Through Nov. 19 1936
Wrappers	\$	\$
A2L	—	58.00
A2F	—	54.00
Leaf		
B1L	—	50.00
B1F	50.00	47.00
B1R	—	46.00
B2L	42.00	42.00
B2F	40.00	41.00
B2R	42.00	37.00
B3L	35.00	36.00
B3LV	29.00	28.00
B3F	32.00	32.00
B3FK	—	18.50
B3FM	—	26.00

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B3FT	—	27.00
B3FV	25.00	26.00
B3R	27.00	28.00
B3RK	—	17.00
B3D	—	23.00
B3GL	—	22.50
B3GF	—	19.50
B4L	26.00	28.00
B4LV	19.00	20.00
B4F	20.00	21.50
B4FK	—	12.50
B4FM	—	16.50
B4FT	—	18.00
B4FV	16.00	17.50
B4R	16.00	16.50
B4RK	—	11.25
B4RV	—	10.50
B4D	—	11.25
B4GL	14.00	15.50
B4GF	12.00	12.00
B5L	18.00	15.50
B5LV	12.00	12.25
B5F	10.25	11.25
B5FK	—	8.00
B5FM	—	8.75
B5FT	8.25	8.75
B5FV	8.50	9.25
B5R	7.50	7.50
B5RK	—	6.50
B5RT	—	6.75
B5RV	—	5.00
B5D	6.50	5.00
B5GL	9.25	8.50
B5GF	6.75	6.50
B5GD	—	3.50
B6L	—	6.25
B6F	4.50	4.75
B6R	3.50	3.50
B6D	3.00	2.50
B6GL	5.00	4.00
B6GF	3.50	3.25
B6GD	—	2.25
Smoking Leaf		
H1F	43.00	44.00

H1R	—	41.00
H2F	38.00	39.00
H2R	37.00	37.00
H3F	33.00	34.00
H3R	28.00	30.00
H4F	23.00	25.00
H4R	19.00	20.00
H5F	13.00	14.25
H5R	10.00	10.50
H6F	6.25	6.50
H6R	5.00	5.25

Cutters

C1L	—	57.00
C1F	—	53.00
C2L	—	49.00
C2F	—	50.00
C3L	47.00	45.00
C3F	44.00	44.00
C4L	43.00	42.00
C4LV	—	36.00
C4F	41.00	41.00
C4FV	—	36.00
C5L	39.00	39.00
C5LV	—	33.00
C5F	37.00	38.00
C5FK	—	23.50
C5FV	—	31.00

Lngs

X1L	39.00	39.00
X1LV	—	33.00
X1F	37.00	38.00
X1FV	—	31.00
X1R	—	34.00
X2L	34.00	35.00
X2LV	—	29.00
X2F	31.00	33.00
X2FK	—	20.50
X2FM	—	27.00
X2FV	—	28.00
X2R	26.00	29.00
X3L	24.50	26.00
X3LV	—	20.50
X3F	21.00	24.00
X3FK	—	14.50

X3FM	—	17.50
X3FV	17.50	18.50
X3R	14.00	17.50
X3GL	—	15.50
X3GF	—	12.75
X4L	13.50	15.00
X4F	11.50	12.00
X4R	8.00	8.75
X4GL	—	8.25
X4GF	—	7.25
X5	5.50	7.00
X5F	5.25	5.75
X5E	—	4.50
X5GL	—	5.25
X5GF	—	3.75

Priming Lugs

P1L	—	37.00
P1F	—	35.00
P2L	—	32.00
P2F	—	31.00
P3L	—	23.00
P3F	—	20.50
P3G	—	13.75
P4L	—	12.75
P4F	—	10.00
P4G	—	7.75
P5L	—	6.50
P5F	—	5.25
P5G	—	3.75

Nondescript

N2B	—	1.75
N3B	—	1.50
N1X	—	3.00
N2X	—	1.75
N3G	—	1.75
N3G	—	1.25

Comments: Sales blocked Monday and Tuesday. Fairly heavy Wednesday and Thursday. Third to sixth quality leaf, third to fifth quality smoking leaf and second to fourth quality lugs principal offerings. Leaf (B group) continued in predominance. Several lots choice quality leaf sold from \$59.00 to \$64.00 and several lots fine and

good quality cutters from \$55.00 to \$61.00. Average prices continued firm.

Note: Tobacco on the Oxford, N. C. Market is officially graded only at the following warehouses: Eanner, Owens No. 1 and Owens No. 2.

**KEY TO STANDARD GRADE MARKS FOR
(376) FLUE-CURED TOBACCO**

GROUPS—A-Wrappers, B-Leaf, H-Smoking Leaf, C-Cutters, X-Lugs, P-Priming Lugs, N-Nondescript.

QUALITIES—1-First quality, 2-Second quality, 3-Third quality, 4-Fourth quality, 5-Fifth quality, 6-Sixth quality.

COLORS—L-Lemon, F-Orange, R-Mahogany, D-Dark Red, G-Green.

SPECIAL FACTORS—K-Off color, M-Mixed, T-Tips, V-Greenish Tinged, U-Unsound, W-Doubtful keeping order.

For example: B4F designates leaf, fourth quality, and orange color.

Issued 10:00 A. M.

**UNITED STATES DEPARTMENT
(377) OF AGRICULTURE
Bureau of Agricultural Economics**

Raleigh, N. C.
Nov. 24, 1936

**DAILY TOBACCO MARKET NEWS REPORT—
TYPE 11(b)**

The following table shows daily average prices for orange color grades in each group on the Oxford, N. C. Market Monday November 23. These average quotations are computed on the basis of a limited number of lots and are intended to reflect only the general trend of the market.

Orange Leaf		Orange Smoking Leaf	
U. S. Grade	Average	U. S. Grade	Average
	\$		\$
B1F	—	H1F	—
B2F	43.00	H2F	39.00
B3F	32.00	H3F	33.00
B4F	20.50	H4F	23.00
B5F	11.00	H5F	11.50
B6F	4.25	H6F	6.00

Orange Cutters		Orange Lugs	
U. S. Grade	Average	U. S. Grade	Average
	\$		\$
C1F	—	X1F	39.00
C2F	—	X2F	33.00
C3F	—	X3F	23.50
C4F	42.00	X4F	12.50
C5F	—	X5F	5.75

Note: Tobacco on the Oxford, N.C. Market officially graded only at the following warehouses: Banner, Owens No. 1 and Owens No. 2.

Comments: Blocked sales. Second to sixth quality leaf and smoking leaf, and first to fifth quality lugs chief offerings. Leaf (B group) predominated. Market firm generally.

KEY TO STANDARD GRADE MARKS FOR FLUE-CURED TOBACCO

GROUPS—A-Wrappers, B-Leaf, H-Smoking Leaf, C-Cutters, X-Lugs, P-Priming Lugs, N-Nondescript.

QUALITIES—1-First quality, 2-Second quality, 3-Third quality, 4-Fourth quality, 5-Fifth quality, 6-Sixth quality.

COLORS—L-Lemon, F-Orange, R-Mahogany, D-Dark Red, G-Green.

SPECIAL FACTORS—K-Off color, M-Mixed, T-Tips, V-Greenish Tinged, U-Unsound, W-Doubtful keeping order.

For example: B4F designates leaf, fourth quality, and orange color.

Issued 1:00 PM

UNITED STATES DEPARTMENT
(379) OF AGRICULTURE
Bureau of Agricultural Economics

Raleigh, N. C.
Nov. 28, 1936.

WEEKLY TOBACCO MARKET NEWS REPORT— TYPE 11(b)

The following table shows average prices by grade for tobacco on the Oxford, N. C. Market this week and this season through Wednesday November 25.

Averages Based on 20 or More Lots of Each Grade—
Price Quotations are in Dollars per 100 Lbs.

U. S. Grade	Week Ending Nov. 25 1936	Season Through Nov. 25 1936
	\$	\$
Wrappers		
A2L	—	58.00
A2F	—	54.00
Leaf		
B1L	—	50.00
B1F	—	48.00
B1R	—	46.00
B2L	—	42.00
B2F	42.00	41.00
B2R	39.00	37.00
B3L	34.00	36.00
B3LV	—	28.00
B3F	32.00	32.00
B3FK	—	19.00
B3FM	—	25.00
B3FT	—	28.00

B3FV	24.50	26.00
B3R	28.00	28.00
B3RK	—	17.00
B3RV	—	19.50
B3D	—	24.50
B3GL	—	22.50
B3GF	—	19.50
B4L	24.50	28.00
B5LT	—	23.50
B4LV	18.50	20.00
B4F	20.50	21.50
B4FK	—	12.50
B4FM	—	17.00
B4FT	—	18.00
B4FV	15.00	17.00
B4R	16.00	14.75
B4RK	—	11.25
B4RV	—	10.75
B4D	—	11.25
B4GL	16.50	15.50
B4GF	11.75	12.00
B5L	15.50	15.50
B5LT	—	10.00
B5LV	11.75	12.25
B5F	11.00	11.25
B5FK	—	8.00
B5FM	—	7.50
B5FT	—	9.00
B5FV	9.25	9.25
B5R	7.50	7.50
B5RK	—	6.25
B5RT	—	6.25
B5RV	—	4.75
B5D	6.50	5.25
B5GL	9.00	8.50
G5GF	6.50	6.50
B5GD	—	3.50
B6L	—	6.25
B6F	4.50	4.75
B6R	3.50	3.50
B6D	3.00	2.50
B6GL	4.25	4.00
B6GF	3.25	3.25
B6GD	2.50	2.25

Smoking Leaf

H1F	—	44.00
H1R	—	41.00
H2F	39.00	39.00
H2R	38.00	37.00
H3F	34.00	34.00
H3R	31.00	30.00
H4F	25.00	25.00
H4R	19.50	20.00
H5F	13.50	14.25
H5R	9.50	10.50
H6F	6.00	6.50
H6R	5.00	5.25

Cutters

C1L	—	57.00
C1F	—	53.00
C2L	—	49.00
C2F	—	50.00
C3L	—	45.00
C3F	—	44.00
C4L	45.00	42.00
C4LV	—	36.00
C4F	43.00	41.00
C4FV	—	36.00
C5L	42.00	39.00
C5LV	—	33.00
C5F	37.00	38.00
C5FK	—	23.50
C5FV	—	31.00

Lugs

X1L	41.00	39.00
X1LV	—	33.00
X1F	39.00	38.00
X1FV	—	31.00
X1R	—	34.00
X2L	36.00	35.00
X2LV	—	29.00
X2F	33.00	33.00
X2FK	—	20.50
X2FM	—	27.00
X2FV	—	28.00
X2R	28.00	29.00
X3L	27.00	26.00

X3LV	—	20.50
X3F	23.00	24.00
X3FK	—	14.50
X3FM	—	17.50
X3FV	—	18.50
X3R	17.00	17.50
X3GL	—	15.50
X3GF	—	13.00
X4L	14.50	15.50
X4F	12.25	12.00
X4R	8.00	8.75
X4GL	—	8.25
X4GF	6.00	7.25
X5L	—	7.00
X5F	6.00	5.75
X5R	—	4.50
X5GL	—	5.25
X5GF	—	3.75
Priming Lugs		
P1L	—	37.00
P1F	—	35.00
P2L	—	32.00
P2F	—	31.00
P3L	—	23.00
P3F	—	20.50
P3G	—	14.00
P4L	—	12.75
P4F	—	10.00
P4G	—	7.75
P5L	—	6.50
P5F	—	5.25
P5G	—	3.75
Nondescript		
N2B	2.00	1.75
N3B	—	1.50
N1X	—	3.00
N2X	—	1.75
N2G	2.00	1.75
N3G	—	1.25

Comments: Sales blocked Monday, heavy Tuesday and light Wednesday. Leaf, smoking leaf and lugs composed bulk of offerings. Third to sixth quality leaf (B

group) predominated. Several lots second quality lemon wrappers sold from \$57.00 to \$63.00 and several lots choice and fine quality leaf from \$55.00 to \$60.00. Average prices firm on all groups.

Note: Tobacco on the Oxford, N. C. Market is officially (380) graded only at the following warehouses: Banner, Owens No. 1 and Owens No. 2.

KEY TO STANDARD GRADE MARKS FOR FLUE-CURED TOBACCO

GROUPS—A-Wrappers, B-Leaf, H-Smoking Leaf, C-Cutters, X-Lugs, P-Priming Lugs, N-Nondescript.

QUALITIES—1-First quality, 2-Second quality, 3-Third quality, 4-Fourth quality, 5-Fifth quality, 6-Sixth quality.

COLORS—L-Lemon, F-Orange, R-Mahogany, D-Dark Red, G-Green.

SPECIAL FACTORS—K-Off color, M-Mixed, T-Tips, V-Greenish Tinged, U-Unsound, W-Doubtful keeping order.

For example: B4F designates leaf, fourth quality, and orange color.

Issued 10:00 AM

UNITED STATES DEPARTMENT
(381) OF AGRICULTURE
Bureau of Agricultural Economics

Raleigh, N. C.
Dec. 1, 1936.

DAILY TOBACCO MARKET NEWS REPORT— TYPE 11(b)

The following table shows daily average prices for orange color grades in each group on the Oxford, N. C. Market Monday November 30. These average quotations are computed on the basis of a limited number of lots and are intended to reflect only the general trend of the market.

Orange Leaf		Orange Smoking Leaf	
U. S. Grade	Average	U. S. Grade	Average
	\$		\$
B1F	—	H1F	—
B2F	—	H2F	41.00
B3F	32.00	H3F	36.00
B4F	21.50	H4F	27.00
B5F	11.50	H5F	15.50
B6F	5.00	H6F	—

Orange Cutters		Orange Lugs	
U. S. Grade	Average	U. S. Grade	Average
	\$		\$
C1F	—	X1F	—
C2F	—	X2F	34.00
C3F	—	X3F	24.50
C4F	—	X4F	13.25
C5F	—	X5F	—

Note: Tobacco on the Oxford, N. C. Market officially graded only at the following warehouses: Banner, Owens No. 1 and Owens No. 2.

Comments: Sales fairly heavy. Offerings consisted chiefly of third to fifth quality leaf, second to fifth quality smoking leaf and second to fourth quality lugs. Leaf (B group) predominated. Market firm generally.

KEY TO STANDARD GRADE MARKS FOR FLUE-CURED TOBACCO

GROUPS—A-Wrappers, B-Leaf, H-Smoking Leaf, C-Cutters, X-Lugs, P-Priming Lugs, N-Nondescript.

QUALITIES—1-First quality, 2-Second quality, 3-Third quality, 4-Fourth quality, 5-Fifth quality, 6-Sixth quality.

COLORS—L-Lemon, F-Orange, R-Mahogany, D-Dark Red, G-Green.

SPECIAL FACTORS—K-Off color, M-Mixed, T-Tips, V-Greenish Tinged, U-Unsound, W-Doubtful keeping order.

For example: B4F designates leaf, fourth quality, and orange color.

Issued 1:00 PM

UNITED STATES DEPARTMENT
(383) OF AGRICULTURE
Bureau of Agricultural Economics

Raleigh, N. C.
Dec. 5, 1936

WEEKLY TOBACCO MARKET NEWS REPORT— TYPE 11(b)

The following table shows average prices by grade for tobacco on the Oxford, N. C. Market this week and this season through Thursday, December 3.

Averages Based on 20 or More Lots of Each Grade—
Price Quotations are in Dollars per 100 Lbs.

U. S. Grade	Week Ending Dec. 3 1936	Season Through Dec. 3 1936
	\$	\$
Wrappers		
A2L	—	58.00
A2F	—	54.00
Leaf		
B1L	—	50.00
B1F	—	48.00
B1R	—	46.00
B2L	—	42.00
B2F	42.00	41.00
B2R	—	37.00
B3L	—	36.00
B3LV	—	28.00
B3F	33.00	32.00
B3FK	—	18.50
B3FM	—	25.00
B3FT	—	27.00

B3FV	25.00	26.00
B3R	30.00	28.00
B3RK	—	17.50
B3RV	—	20.00
B3D	—	24.50
B3GL	—	22.50
B3GF	—	19.50
B4L	—	28.00
B4LT	—	23.50
B4LV	22.50	20.00
B4F	20.50	21.50
B4FK	—	12.50
B4FM	—	17.00
B4FT	—	18.00
B4FV	18.00	17.00
B4R	16.50	16.50
B4RK	—	11.25
B4RT	—	15.00
B4RV	—	11.25
B4D	—	11.00
B4GL	—	15.50
B4GF	11.00	12.00
B5L	—	15.50
B5LT	—	10.00
B5LV	—	12.25
B5F	11.00	11.25
B5FK	—	8.00
B5FM	—	7.50
B5FT	—	8.75
B5FV	8.50	9.25
B5R	7.00	7.50
B5RK	—	6.50
B5RT	—	6.25
B5RV	—	5.25
B5D	—	5.25
B5GL	9.00	8.50
B5GF	5.75	6.50
B5GD	—	3.50
B6L	—	6.25
B6F	4.75	4.75
B6R	3.50	3.50
B6D	—	2.50
B6GL	—	4.00
B6GF	3.25	3.25
B6GD	—	2.50

Smoking Leaf

H1F	—	44.00
H1R	—	41.00
H2F	40.00	39.00
H2R	—	37.00
H3F	36.00	34.00
H3R	32.00	30.00
H4F	26.00	25.00
H4R	20.50	20.00
H5F	14.50	14.25
H5R	10.50	10.50
H6F	6.50	6.50
H6R	—	5.25

Cutters

C1L	—	57.00
C1F	—	53.00
C2L	—	49.00
C2F	—	50.00
C3L	—	45.00
C3F	—	44.00
C4L	—	42.00
C4LV	—	36.00
C4F	43.00	41.00
C4FV	—	37.00
C5L	—	39.00
C5LV	—	33.00
C5F	37.00	38.00
C5FK	—	23.50
C5FV	—	31.00

Lugs

X1L	—	39.00
X1LV	—	33.00
X1F	—	38.00
X1FV	—	31.00
X1R	—	34.00
X2L	—	35.00
X2LV	—	29.00
X2F	34.00	33.00
X2FK	—	20.50
X2FM	—	27.00
X2FV	—	28.00
X2R	—	29.00
X3L	—	26.00

X3L	—	20.50
X3F	24.50	24.00
X3FK	—	14.50
X3FM	—	17.50
X3FV	—	18.50
X3R	—	17.50
X3GL	—	15.50
X3GF	—	13.00
X4L	—	15.00
X4F	12.50	12.00
X4R	—	8.75
X4GL	—	8.00
X4GF	—	7.25
X5L	—	7.25
X5F	—	5.75
X5R	—	4.75
X5GL	—	5.00
X5GF	—	3.75

Priming Lugs

P1L	—	37.00
P1F	—	35.00
P2L	—	32.00
P2F	—	31.00
P3L	—	23.00
P3F	—	20.50
P3G	—	14.00
P4L	—	12.75
P4F	—	10.00
P4G	—	7.75
P5L	—	6.50
P5F	—	5.25
P5G	—	3.75

Nondescript

N2B	—	1.75
N3B	—	1.50
N1X	—	3.00
N2X	—	1.75
N2G	—	1.75
N3G	—	1.25

Comments: Sales fairly heavy Monday and light remainder of week. Leaf and smoking leaf composed bulk of offerings with fair volume of lugs included.

Leaf (B group) continued in predominance. All groups offered in decreased volume. Average prices continued firm.

Note: Tobacco on the Oxford, N. C. Market is officially (384) graded only at the following warehouses: Banner, Owens No. 1 and Owens No. 2.

KEY TO STANDARD GRADE MARKS FOR FLUE-CURED TOBACCO

GROUPS—A-Wrappers, B-Leaf, H-Smoking Leaf, C-Cutters, X-Lugs, P-Priming Lugs, N-Nondescript.

QUALITIES—1-First quality, 2-Second quality, 3-Third quality, 4-Fourth quality, 5-Fifth quality, 6-Sixth quality.

COLORS—L-Lemon, F-Orange, R-Mahogany, D-Dark Red, G-Green.

SPECIAL FACTORS—K-Off color, M-Mixed, T-Tips, V-Greenish Tinged, U-Unsound, W-Doubtful keeping order.

For example: B4F designates leaf, fourth quality, and orange color.

Issued 10:00 AM

UNITED STATES DEPARTMENT
(385) OF AGRICULTURE
Bureau of Agricultural Economics

Raleigh, N. C.
Dec. 8, 1936

DAILY TOBACCO MARKET NEWS REPORT— TYPE 11(b)

The following table shows daily average prices for orange color grades in each group on the Oxford, N. C. Market Monday, December 7. These average quotations are computed on the basis of a limited number of lots and are intended to reflect only the general trend of the market.

Orange Leaf		Orange Smoking Leaf	
U. S. Grade	Average	U. S. Grade	Average
	\$		\$
B1F	—	H1F	—
B2F	—	H2F	42.00
B3F	36.00	H3F	36.00
B4F	25.00	H4F	31.00
B5F	11.25	H5F	16.50
B6F	4.75	H6F	—

Orange Cutters		Orange Lugs	
U. S. Grade	Average	U. S. Grade	Average
	\$		\$
C1F	—	X1F	—
C2F	—	X2F	38.00
C3F	—	X3F	28.00
C4F	—	X4F	15.50
C5F	—	X5F	—

Note: Tobacco on the Oxford, N. C. Market officially graded only at the following warehouses: Banner, Owens No. 1 and Owens No. 2.

Comments: Blocked sales. Third to fifth quality leaf, second to fifth quality smoking leaf and second to fourth quality lugs. Principal offerings. Leaf (B group) predominated. Several lots choice leaf sold from \$61.00 to \$75.00. Market firm generally.

KEY TO STANDARD GRADE MARKS FOR FLUE-CURED TOBACCO

GROUPS—A-Wrappers, B-Leaf, H-Smoking Leaf, C-Cutters, X-Lugs, P-Priming Lugs, N-Non-descript.

QUALITIES—1-First quality, 2-Second quality, 3-Third quality, 4-Fourth quality, 5-Fifth quality, 6-Sixth quality.

COLORS—L-Lemon, F-Orange, R-Mahogany, D-Dark Red, G-Green.

SPECIAL FACTORS—K-Off color, M-Mixed, T-Tips, V-Greenish Tinged, U-Unsound, W-Doubtful keeping order.

For example: B4F designates leaf, fourth quality, and orange color.

Issued 12:45 P. M.

UNITED STATES DEPARTMENT

(387) OF AGRICULTURE

Bureau of Agricultural Economics

Raleigh, N. C.

Dec. 9, 1936

DAILY TOBACCO MARKET NEWS REPORT— TYPE 11(b)

The following table shows daily average prices for orange color grades in each group on the Oxford, N. C. market Tuesday, December 8. These average quotations are computed on the basis of a limited number of lots and are intended to reflect only the general trend of the market.

Orange Leaf		Orange Smoking Leaf	
U. S. Grade	Average	U. S. Grade	Average
	\$		\$
B1F	—	H1F	—
B2F	47.00	H2F	43.00
B3F	36.00	H3F	38.00
B4F	28.00	H4F	30.00
B5F	14.00	H5F	21.00
B6F	5.50	H6F	8.75

Orange Cutters		Orange Lugs	
U. S. Grade	Average	U. S. Grade	Average
	\$		\$
C1F	—	X1F	—
C2F	—	X2F	—
C3F	—	X3F	31.00
C4F	—	X4F	17.00
C5F	—	X5F	6.75

Note: Tobacco on the Oxford, N. C. market officially graded only at the following warehouses: Banner, Owens No. 1 and Owens No. 2.

Comments: Sales completed at 3:00 P. M. Offerings consisted chiefly of third to fifth quality leaf, second to sixth quality smoking leaf and third to fifth quality lugs. Leaf (B & H groups) predominated. Demand particularly good on smoking leaf.

KEY TO STANDARD GRADE MARKS FOR FLUE-CURED TOBACCO

GROUPS—A-Wrappers, B-Leaf, H-Smoking Leaf, C-Cutters, X-Lugs, P-Priming Lugs, N-Nondescript.

QUALITIES—1-First quality, 2-Second quality, 3-Third quality, 4-Fourth quality, 5-Fifth quality, 6-Sixth quality.

COLORS—L-Lemon, F-Orange, R-Mahogany, D-Dark Red, G-Green.

SPECIAL FACTORS—K-Off color, M-Mixed, T-Tips, V-Greenish Tinged, U-Unsound, W-Doubtful keeping order.

For example: B4F designates leaf, fourth quality, and orange color.

Issued 11:30 P. M.

UNITED STATES DEPARTMENT
(389) OF AGRICULTURE
Bureau of Agricultural Economics

Raleigh, N. C.
Dec. 10, 1936

DAILY TOBACCO MARKET NEWS REPORT— TYPE 11(b)

The following table shows daily average prices for orange color grades in each group on the Oxford, N. C. market Wednesday, December 9. These average quotations are computed on the basis of a limited number of lots and are intended to reflect only the general trend of the market.

Orange Leaf	
U. S. Grade	Average
	\$
B1F	—
B2F	—
B3F	34.00
B4F	23.50
B5F	11.00
B6F	4.75

Orange Smoking Leaf	
U. S. Grade	Average
	\$
H1F	—
H2F	—
H3F	37.00
H4F	29.00
H5F	18.50
H6F	—

Orange Cutters	
U. S. Grade	Average
	\$
C1F	—
C2F	—
C3F	—
C4F	—
C5F	—

Orange Lugs	
U. S. Grade	Average
	\$
X1F	—
X2F	—
X3F	—
X4F	15.50
X5F	—

Note: Tobacco on the Oxford, N. C. market officially graded only at the following warehouses: Banner, Owens No. 1 and Owens No. 2.

Comments: Sales medium in volume. Bulk of offerings composed of third to fifth quality leaf and smoking leaf with fair volume of lugs included. Leaf (B group) predominated. Several lots choice and fine quality orange leaf sold from \$55.00 to \$62.00.

KEY TO STANDARD GRADE MARKS FOR FLUE-CURED TOBACCO

GROUPS—A-Wrappers, B-Leaf, H-Smoking Leaf, C-Cutters, X-Lugs, P-Priming Lugs, N-Non-descript.

QUALITIES—1-First quality, 2-Second quality, 3-Third quality, 4-Fourth quality, 5-Fifth quality, 6-Sixth quality.

COLORS—L-Lemon, F-Orange, R-Mahogany, D-Dark Red, G-Green.

332 HENRY A. WALLACE, SECRETARY, ET AL., APPELLANTS,

SPECIAL FACTORS—K-Off color, M-Mixed, T-Tips, V-Greenish Tinged, U-Unsound, W-Doubtful keeping order.

For example: B4F designates leaf, fourth quality, and orange color.

Issued 11:30 A. M.

UNITED STATES DEPARTMENT
(391) OF AGRICULTURE
Bureau of Agricultural Economics

Raleigh, N. C.
Dec. 12, 1936.

WEEKLY TOBACCO MARKET NEWS REPORT—
TYPE 11 (b)

The following table shows average prices by grade for tobacco on the Oxford, N. C. Market this week and this season through Thursday, December 10.

Averages Based on 20 or More Lots of Each Grade
Price Quotations are in Dollars per 100 Lbs.

U. S. Grade	Week Ending Dec. 10 1936	Season Through Dec. 10 1936
	\$	\$
Wrappers		
A2L	—	58.00
A2F	—	54.00
Leaf		
B1L	—	50.00
B1F	—	48.00
B1R	—	46.00
B2L	—	43.00
B2F	47.00	41.00
B2R	—	37.00
B3L	36.00	36.00
B3LT	—	31.00
B3LV	—	28.00
B3F	36.00	33.00
B3FK	—	18.50
B3FM	—	25.00

B3FT	—	28.00
B3FV	32.00	26.00
B3R	33.00	28.00
B3RK	—	17.50
B3RV	—	20.50
B3D	—	25.00
B3GL	—	22.50
B3GF	—	19.50
B4L	—	28.00
B4LT	—	24.50
B4LV	22.50	20.00
B4F	25.00	21.50
B4FK	—	12.50
B4FM	—	17.00
B4FT	23.50	19.00
B4FV	19.50	17.50
B4R	21.00	17.00
B4RK	—	11.50
B4RT	—	16.00
B4RV	—	11.50
B4D	—	12.00
B5L	—	15.50
B5LT	—	10.25
B5LV	—	12.25
B5F	12.25	11.25
B5FK	—	8.00
B5FM	—	7.50
B5FT	—	9.00
B5FV	10.75	9.50
B5R	9.50	7.75
B5RK	—	6.50
B5RT	—	6.25
B5RV	5.75	5.50
B5D	6.75	5.50
B5GL	11.25	8.75
B5GF	7.50	6.50
B5GD	—	3.75
B6L	—	6.25
B6F	5.25	4.75
B6R	4.50	3.75
B6D	3.75	3.00
B6GL	5.00	4.00
B6GF	3.75	3.25
B6GD	3.00	2.50

334 HENRY A. WALLACE, SECRETARY, ET AL., APPELLANTS,

Smoking Leaf

H1F	—	44.00
H1R	—	41.00
H2F	42.00	39.00
H2R	—	37.00
H3F	37.00	34.00
H3R	34.00	30.00
H4F	30.00	26.00
H4R	23.50	20.50
H5F	19.00	14.75
H5R	12.75	10.75
H6F	9.50	6.75
H6R	6.75	5.50

Cutters

C1L	—	57.00
C1F	—	53.00
C2L	—	49.00
C2F	—	50.00
C3L	—	46.00
C3F	—	44.00
C4L	47.00	42.00
C4LV	—	36.00
C4F	43.00	41.00
C4FV	—	37.00
C5L	—	39.00
C5LV	—	33.00
C5F	41.00	38.00
C5FK	—	24.00
C5FV	—	31.00

Lugs

X1L	43.00	39.00
X1LV	—	33.00
X1F	41.00	38.00
X1FV	—	31.00
X1R	—	34.00
X2L	39.00	35.00
X2LV	—	29.00
X2F	38.00	33.00
X2FK	—	20.50
X2FM	—	27.00
X2FV	—	27.00
X2R	—	29.00
X3L	32.00	27.00

X3LV	—	20.50
X3F	28.00	24.00
X3FK	—	14.50
X3FM	—	17.50
X3FV	—	18.50
X3R	—	17.50
X3GL	—	15.50
X3GF	—	13.90
X4L	16.50	15.50
X4F	15.50	12.25
X4R	11.50	9.90
X4GL	—	8.00
X4GF	—	7.25
X5L	—	7.00
X5F	6.75	5.75
X5R	—	4.75
X5GL	—	4.75
X5GF	—	4.00
Priming Lugs		
P1L	—	37.00
P1F	—	35.00
P2L	—	32.60
P2F	—	31.00
P3L	—	23.00
P3F	—	20.50
P3G	—	14.00
P4L	—	12.75
P4F	—	10.00
P4G	—	7.50
P5L	—	6.50
P5F	—	5.25
P5G	—	3.75
Nondescript		
N2B	2.50	2.00
N3B	—	1.50
N1X	2.25	2.75
N2X	—	1.75
N2G	1.75	1.75
N3G	1.50	1.25

Comments: Sales blocked Monday, fairly heavy Tuesday and medium remainder of week. Third to fifth quality leaf, second to fifth quality smoking leaf and

second to fourth quality lugs chief offerings. Leaf (B & H groups) predominated. Several lots choice and fine quality leaf sold from \$55.00 to \$62.00 and several lots fine and good quality cutters from \$50.00 to \$56.00. Compared with last week, average prices show an increase.

Note: Tobacco on the Oxford, N. C. Market is officially (392) graded only at the following warehouses: Banner, Owens No. 1 and Owens No. 2.

KEY TO STANDARD GRADE MARKS FOR FLUE-CURED TOBACCO

GROUPS—A-Wrappers, B-Leaf, H-Smoking Leaf, C-Cutters, X-Lugs, P-Priming Lugs, N-Nondescript.

QUALITIES—1-First quality, 2-Second quality, 3-Third quality, 4-Fourth quality, 5-Fifth quality, 6-Sixth quality.

COLORS—L-Lemon, F-Orange, R-Mahogany, D-Dark Red, G-Green.

SPECIAL FACTORS—K-Off color, M-Mixed, T-Tips, V-Greenish Tinged, U-Unsound, W-Doubtful keeping order.

For example: B4F designates leaf, fourth quality, and orange color.

Issued 10:00 AM

UNITED STATES DEPARTMENT
(393) OF AGRICULTURE
Bureau of Agricultural Economics

Raleigh, N. C.
Dec. 15, 1936.

DAILY TOBACCO MARKET NEWS REPORT— TYPE 11(b)

The following table shows daily average prices for orange color grades in each group on the Oxford, N. C. market Monday, December 14. These average quotations are computed on the basis of a limited number of

lots and are intended to reflect only the general trend of the market.

Orange Leaf		Orange Smoking Leaf	
U. S. Grade	Average	U. S. Grade	Average
	\$		\$
B1F	—	H1F	—
B2F	—	H2F	44.00
B3F	36.00	H3F	39.00
B4F	25.00	H4F	31.00
B5F	12.75	H5F	19.00
B6F	5.50	H6F	8.00

Orange Cutters		Orange Lugs	
U. S. Grade	Average	U. S. Grade	Average
	\$		\$
C1F	—	X1F	—
C2F	—	X2F	39.00
C3F	—	X3F	32.00
C4F	—	X4F	15.00
C5F	—	X5F	5.25

Note: Tobacco on the Oxford, N. C. market officially graded only at the following warehouses: Banner, Owens No. 1 and Owens No. 2.

Comments: Blocked sales. Third to sixth quality leaf, second to sixth quality smoking leaf and second to fifth quality lugs chief offerings. Leaf (B & H groups) continued in predominance. Market firm generally. The Oxford market will close Wednesday, December 16 for the Christmas holidays and reopen Monday, January 18, 1937.

KEY TO STANDARD GRADE MARKS FOR FLUE-CURED TOBACCO

GROUPS—A-Wrappers, B-Leaf, H-Smoking Leaf, C-Cutters, X-Lugs, P-Priming Lugs, N-Non-descript.

338 HENRY A. WALLACE, SECRETARY, ET AL., APPELLANTS,

QUALITIES—1-First quality, 2-Second quality, 3-Third quality, 4-Fourth quality, 5-Fifth quality, 6-Sixth quality.

COLORS—L-Lemon, F-Orange, R-Mahogany, D-Dark Red, G-Green.

SPECIAL FACTORS—K-Off color, M-Mixed, T-Tips, V-Greenish Tinged, U-Unsound, W-Doubtful keeping order.

For example: B4F designates leaf, fourth quality, and orange color.

Issued 1:30 PM

UNITED STATES DEPARTMENT
(395) OF AGRICULTURE
Bureau of Agricultural Economics

Raleigh, N. C.
Dec. 18, 1936.

WEEKLY TOBACCO MARKET NEWS REPORT—
TYPE 11(b)

The following table shows average prices by grade for tobacco on the Oxford, N. C. Market this week and this season through Wednesday December 16.

Averages Based on 20 or More Lots of Each Grade—
Price Quotations are in Dollars Per 100 Lbs.

U. S. Grade	Week Ending Dec. 16 1936	Season Through Dec. 16 1936
	\$	\$
Wrappers		
A2L	—	58.00
A2F	—	54.00
Leaf		
B1L	—	50.00
B1F	—	48.00
B1R	—	46.00
B2L	—	43.00

B2F	—	41.00
B2R	—	38.00
B3L	—	36.00
B3LT	—	31.00
B3LV	—	28.00
B3F	36.00	33.00
B3FK	—	19.00
B3FM	—	24.50
B3FT	—	29.00
B3FV	—	26.00
B3R	32.00	28.00
B3RK	—	17.50
B3RV	—	20.50
B3D	—	26.00
B3GL	—	22.50
B3GF	—	19.50
B4L	—	28.00
B4LT	—	23.50
B4LV	22.00	20.50
B4F	24.50	22.00
B4FK	—	13.00
B4FM	—	17.50
B4FT	—	19.50
B4FV	19.50	17.50
B4R	22.50	17.00
B4RK	—	11.50
B4RT	—	16.00
B4RV	—	12.50
B4D	—	13.00
B4GL	—	15.50
B4GF	—	12.00
B5L	18.50	16.00
B5LT	—	10.75
B5LV	14.75	12.50
B5F	12.75	11.50
B5FK	—	8.00
B5FM	—	8.00
B5FT	10.25	9.00
B5FV	10.75	9.50
B5R	9.50	8.00
B5RK	—	6.50
B5RM	—	5.75
B5RT	—	6.25
B5RV	6.00	5.50
B5D	8.50	6.00

B5GL	9.00	8.75
B5GF	7.50	6.75
B5GD	—	3.75
B6L	—	6.50
B6F	5.50	5.00
B6FT	—	4.50
B6R	4.25	3.75
B6D	4.00	3.00
B6GL	4.75	4.25
B6GF	4.00	3.50
B6GD	3.00	2.75

Smoking Leaf

H1F	—	44.00
H1R	—	41.00
H2F	44.00	39.00
H2R	—	37.00
H3F	38.00	34.00
H3R	35.00	30.00
H4F	30.00	26.00
H4R	24.00	20.50
H5F	19.50	15.00
H5R	13.75	11.00
H6F	9.00	7.00
H6R	6.50	5.50

Cutters

C1L	—	57.00
C1F	—	53.00
C2L	—	49.00
C2F	—	50.00
C3L	—	46.00
C3F	—	44.00
C4L	—	42.00
C4LV	—	36.00
C4F	45.00	41.00
C4FV	—	37.00
C5L	43.00	39.00
C5LV	—	33.00
C5F	42.00	38.00
C5FK	—	24.00
C5FV	—	31.00

Lugs

X1L	44.00	39.00
X1LV	—	33.00

X1F	43.00	38.00
X1FV	—	31.00
X1R	—	34.00
X2L	39.00	35.00
X2LV	—	29.00
X2F	39.00	33.00
X2FK	—	20.50
X2FM	—	27.00
X2FV	—	28.00
X2R	—	29.00
X3L	29.00	27.00
X3LV	—	20.50
X3F	31.00	24.50
X3FK	—	15.00
X3FM	—	18.00
X3FV	—	19.00
X3R	—	17.50
X3GL	—	15.50
X3GF	—	12.75
X4L	17.00	15.50
X4F	16.00	12.50
X4R	10.25	9.00
X4GL	—	8.00
X4GF	—	7.25
X5L	—	7.25
X5F	6.00	5.75
X5R	—	4.75
X5GL	—	4.75
X5GF	—	3.75

Priming Lugs

P1L	—	37.00
P1F	—	35.00
P2L	—	32.00
P2F	—	31.00
P3L	—	23.00
P3F	—	20.50
P3G	—	14.00
P4L	—	12.75
P4F	11.25	10.00
P4G	—	7.50
P5L	—	6.50
P5F	4.50	5.25
P5G	—	3.50

Nondescript		
N2B	2.50	2.00
N3B	1.25	1.50
N1X	2.50	2.75
N2X	—	2.00
N2G	2.00	1.75
N3G	1.00	1.25

Comments: Sales blocked Monday and Tuesday and medium in volume Wednesday. Third to fifth quality leaf, smoking leaf and lugs composed majority of offerings. Leaf (B group) predominated. One lot fine quality lemon leaf sold for \$75.00 and several lots good quality cutters sold for \$50.00 to \$56.00. Average prices continue firm. The Oxford Market closed Wednesday, December 16 for the Christmas Holidays and will reopen Monday, January 18, 1937.

Note: Tobacco on the Oxford, N. C. Market officially (396) graded only at the following warehouses: Banner, Owens No. 1 and Owens No. 2.

KEY TO STANDARD GRADE MARKS FOR FLUE-CURED TOBACCO

GROUPS—A-Wrappers, B-Leaf, H-Smoking Leaf, C-Cutters, X-Lugs, P-Priming Lugs, N-Nondescript.

QUALITIES—1-First quality, 2-Second quality, 3-Third quality, 4-Fourth quality, 5-Fifth quality, 6-Sixth quality.

COLORS—L-Lemon, F-Orange, R-Mahogany, D-Dark Red, G-Green.

SPECIAL FACTORS—K-Off color, M-Mixed, T-Tips, V-Greenish Tinged, U-Unsound, W-Doubtful keeping order.

For example: B4F designates leaf, fourth quality, and orange color.

Issued 10:00 AM

UNITED STATES DEPARTMENT
(397) OF AGRICULTURE
Bureau of Agricultural Economics

January 20, 1937

DAILY TOBACCO MARKET NEWS REPORT—
TYPE 11(b)

The following table shows daily average prices for orange color grades in each group on the Oxford, N. C. Market Tuesday, January 19. These average quotations are computed on the basis of a limited number of lots and are intended to reflect only the general trend of the market.

Orange Leaf		Orange Smoking Leaf	
U. S. Grade	Average	U. S. Grade	Average
	\$		\$
B1F	—	H1F	—
B2F	—	H2F	44.00
B3F	37.00	H3F	40.00
B4F	31.00	H4F	33.00
B5F	18.00	H5F	21.00
B6F	6.25	H6F	10.00

Orange Cutters		Orange Lugs	
U. S. Grade	Average	U. S. Grade	Average
	\$		\$
C1F	—	X1F	—
C2F	—	X2F	—
C3F	—	X3F	—
C4F	—	X4F	17.50
C5F	—	X5F	—

Note: Tobacco on the Oxford, N. C. Market officially graded only at the following warehouses: Banner, Owens No. 1 and Owens No. 2.

344 HENRY A. WALLACE, SECRETARY, ET AL., APPELLANTS,

Comments: Heavy sales. Fourth to sixth quality leaf, fourth and fifth quality smoking leaf composed bulk of offerings. Leaf (B group) predominated. Average prices quoted above show increases over week ending December 16, 1936. Prices taken as a whole, were strong.

KEY TO STANDARD GRADE MARKS FOR FLUE-CURED TOBACCO

GROUPS—A-Wrappers, B-Leaf, H-Smoking Leaf, C-Cutters, X-Lugs, P-Priming Lugs, N-Nondescript.

QUALITIES—1-First quality, 2-Second quality, 3-Third quality, 4-Fourth quality, 5-Fifth quality, 6-Sixth quality.

COLORS—L-Lemon, F-Orange, R-Mahogany, D-Dark Red, G-Green.

SPECIAL FACTORS—K-Off color, M-Mixed, T-Tips, V-Greenish Tinged, U-Unsound. W-Doubtful keeping order.

For example: B4F designates leaf, fourth quality, and orange color.

Issued: 4:00 P. M.

UNITED STATES DEPARTMENT
(399) OF AGRICULTURE
Bureau of Agricultural Economics

January 21, 1937

DAILY TOBACCO MARKET NEWS REPORT— TYPE 11(b)

The following table shows daily average prices for orange color grades in each group on the Oxford, N. C. market Wednesday, January 20. These average quotations are computed on the basis of a limited number of lots and are intended to reflect only the general trend of the market.

Orange Leaf		Orange Smoking Leaf	
U. S. Grade	Average	U. S. Grade	Average
	\$		\$
B1F	—	H1F	—
B2F	—	H2F	—
B3F	37.00	H3F	38.00
B4F	30.00	H4F	—
B5F	16.00	H5F	20.50
B6F	5.75	—	—

Orange Cutters		Orange Lugs	
U. S. Grade	Average	U. S. Grade	Average
	\$		\$
C1F	—	X1F	—
C2F	—	X2F	—
C3F	—	X3F	—
C4F	—	X4F	—
C5F	—	X5F	—

Note: Tobacco on the Oxford, N. C. market officially graded only at the following warehouses: Banner, Owen No. 1 and Owen No. 2.

Comments: Sales medium. The principal offerings were composed of fourth to sixth quality leaf, and fourth and fifth quality smoking leaf. Leaf (B group) predominated. Most prices quoted above are somewhat lower than those of previous day (Tuesday). Taking the market as a whole, however, average prices were above those of the week ending December 16, 1936.

KEY TO STANDARD GRADE MARKS FOR FLUE-CURED TOBACCO

GROUPS—A-Wrappers, B-Leaf, H-Smoking Leaf, C-Cutters, X-Lugs, P-Priming Lugs, N-Nondescript.

QUALITIES—1-First quality, 2-Second quality, 3-Third quality, 4-Fourth quality, 5-Fifth quality, 6-Sixth quality.

346 HENRY A. WALLACE, SECRETARY, ET AL., APPELLANTS,
COLORS—L-Lemon, F-Orange, R-Mahogany, D-Dark
Red, G-Green.

SPECIAL FACTORS—K-Off color, M-Mixed, T-Tips,
V-Greenish Tinged, U-Unsound, W-Doubtful keeping
order.

For example: B4F designates leaf, fourth quality, and
orange color.

Issued: 1:00 P. M.

UNITED STATES DEPARTMENT Lynchburg, Va.
(401) OF AGRICULTURE January 23, 1937.
Bureau of Agricultural Economics

WEEKLY TOBACCO MARKET NEWS REPORT—
TYPE 11(b)

The following table shows average prices by grade for
tobacco on the Oxford, N. C. market this week and this
season through Thursday, January 21, 1937.

Averages Based on 20 or More Lots of Each Grade—
Price Quotations are in Dollars Per 100 Lbs.

U. S. Grade	Week Ending Jan. 21 1937	Season Through Jan. 21 1937
	\$	\$
Wrappers		
A2L	—	58.00
A2F	—	54.00
Leaf		
B1L	—	50.00
B1F	—	48.00
B1R	—	46.00
B2L	—	43.00
B2F	45.00	41.00
B2R	—	38.00

B3L	—	36.00
B3LT	—	31.00
B3LV	—	28.00
B3F	37.00	33.00
B3FK	—	19.00
B3FM	—	25.00
B3FT	—	29.00
B3FV	—	26.00
B3R	32.00	28.00
B3RK	—	17.50
B3RV	—	21.00
B3D	—	27.00
B3GL	—	22.50
B3GF	—	19.50
B4L	—	28.00
B4LT	—	24.50
B4LV	25.00	20.50
B4F	30.00	22.00
B4FK	—	13.00
B4FM	—	17.50
B4FT	—	19.50
B4FV	21.00	17.50
B4R	24.00	17.50
B4RK	—	11.75
B4RT	—	16.50
B4RV	—	13.25
B4D	—	13.50
B4GL	—	15.50
B4GF	—	12.25
B5L	—	16.00
B5LT	—	11.25
B5LV	17.00	12.75
B5F	17.00	11.75
B5FK	—	8.00
B5FM	—	9.75
B5FT	15.00	9.75
B5FV	11.50	9.75
B5R	10.25	8.00
B5RK	—	6.50
B5RM	—	6.25
B5RT	9.25	7.00
B5RV	8.25	6.00
B5D	6.50	6.00
B5GL	11.00	9.00
B5GF	7.25	6.75

B5GD	—	3.50
B6L	—	6.50
B6F	6.00	5.00
B6FT	—	4.50
B6R	4.00	3.75
B6D	3.25	3.00
B6GL	5.00	4.25
B6GF	3.75	3.50
B6GD	—	2.75

Smoking Leaf

H1F	—	44.00
H1R	—	41.00
H2F	44.00	39.00
H2R	—	37.00
H3F	40.00	34.00
H3R	35.00	30.00
H4F	33.00	26.00
H4R	—	20.50
H5F	22.00	15.50
H5R	14.50	11.25
H6F	8.75	7.00
H6R	6.00	5.75

Cutters

C1L	—	56.00
C1F	—	53.00
C2L	—	49.00
C2F	—	50.00
C3L	—	46.00
C3F	—	44.00
C4L	—	42.00
C4LV	—	36.00
C4F	—	41.00
C4FV	—	37.00
C5L	—	39.00
C5LV	—	33.00
C5F	—	38.00
C5FK	—	24.00
C5FV	—	31.00

Lugs

X1L	—	39.00
X1LV	—	33.00

X1F	—	38.00
X1FV	—	31.00
X1R	—	34.00
X2L	—	35.00
X2LV	—	29.00
X2F	41.00	33.00
X2FK	—	20.50
X2FM	—	27.00
X2FV	—	27.00
X2R	—	29.00
X3L	—	27.00
X3LV	—	21.00
X3F	33.00	24.50
X3FK	—	15.00
X3FM	—	18.00
X3FV	—	19.00
X3R	—	17.50
X3GL	—	15.50
X3GF	—	12.75
X4L	—	15.50
X4F	17.50	12.50
X4R	—	9.00
X4GL	—	8.50
X4GF	—	7.25
X5L	—	7.00
X5F	—	5.75
X5R	—	4.75
X5GL	—	4.75
X5GF	—	3.75

Priming Lugs

P1L	—	37.00
P1F	—	35.00
P2L	—	32.00
P2F	—	30.00
P3L	—	23.00
P3F	—	20.50
P3G	—	14.00
P4L	—	12.75
P4F	—	10.00
P4G	—	7.50
P5L	—	6.50
P5F	—	5.25
P5G	—	3.50

Nondescript		
N2B	2.00	2.00
N3B	—	1.50
N1X	—	2.75
N2X	—	2.00
N2G	1.75	1.75
N3G	1.75	1.25

Comments: The Oxford market reopened Tuesday, January 19, 1937 after the Christmas recess. Sales were heavy on Tuesday and medium in volume Wednesday and Thursday. Fourth to sixth quality leaf, and third to fifth quality smoking leaf were the principal offerings. Leaf (B group) predominated. Average prices by group show increases over those for the week ending December 16, 1936. Demand was unusually good for fourth and fifth quality orange leaf and smoking leaf.

KEY TO STANDARD GRADE MARKS FOR (402) FLUE-CURED TOBACCO

GROUPS—A-Wrappers, B-Leaf, H-Smoking Leaf, C-Cutters, X-Lugs, P-Priming Lugs, N-Nondescript.

QUALITIES—1-First quality, 2-Second quality, 3-Third quality, 4-Fourth quality, 5-Fifth quality, 6-Sixth quality.

COLORS—L-Lemon, F-Orange, R-Mahogany, D-Dark Red, G-Green.

SPECIAL FACTORS—K-Off color, M-Mixed, T-Tips, V-Greenish Tinged, U-Unsound, W-Doubtful keeping order.

For example: B4F designates leaf, fourth quality, and orange color.

Note: Tobacco on the Oxford, N. C. market officially graded only at the following warehouses: Banner, Owen No. 1 and Owen No. 2.

Issued: 11:30 A. M.

UNITED STATES DEPARTMENT OF AGRICULTURE
 (403) OF AGRICULTURE
 Bureau of Agricultural Economics

Lynchburg, Va.
 January 26, 1937.

DAILY TOBACCO MARKET NEWS REPORT—
 TYPE 11(b)

The following table shows daily average prices for orange color grades in each group on the Oxford, N. C. market Monday, January 25. These average quotations are computed on the basis of a limited number of lots and are intended to reflect only the general trend of the market.

Orange Leaf		Orange Smoking Leaf	
U. S. Grade	Average	U. S. Grade	Average
	\$		\$
B1F	—	H1F	—
B2F	—	H2F	45.00
B3F	37.00	H3F	41.00
B4F	26.00	H4F	33.00
B5F	16.50	H5F	23.50
B6F	6.00		

Orange Cutters		Orange Lugs	
U. S. Grade	Average	U. S. Grade	Average
	\$		\$
C1F	—	X1F	—
C2F	—	X2F	—
C3F	—	X3F	36.00
C4F	—	X4F	18.50
C5F	—	X5F	—

Note: Tobacco on the Oxford, N. C. market officially graded only at the following warehouses: Banner, Owen No. 1 and Owen No. 2.

Comments: Offerings were heavy,—sale lasting until

approximately 3:45 P. M. Principal offerings were fourth to sixth quality leaf, third to fifth quality smoking leaf, and third and fourth quality lugs. Leaf (B group) predominated. Above average prices compared with corresponding prices for week ending January 21, 1937 are higher for smoking leaf and lugs and mixed for leaf. Fourth and fifth qualities orange leaf are lower; third and sixth qualities, firm.

KEY TO STANDARD GRADE MARKS FOR FLUE-CURED TOBACCO

GROUPS—A-Wrappers, B-Leaf, H-Smoking Leaf, C-Cutters, X-Lugs, P-Priming Lugs, N-Nondescript.

QUALITIES—1-First quality, 2-Second quality, 3-Third quality, 4-Fourth quality, 5-Fifth quality, 6-Sixth quality.

COLORS—L-Lemon, F-Orange, R-Mahogany, D-Dark Red, G-Green.

SPECIAL FACTORS—K-Off color, M-Mixed, T-Tips, V-Greenish Tinged, U-Unsound, W-Doubtful keeping order.

For example: B4F designates leaf, fourth quality, and orange color.

Issued: 3:15 P. M.

UNITED STATES DEPARTMENT
(405) OF AGRICULTURE
Bureau of Agricultural Economics

Lynchburg, Va.
January 30, 1937

WEEKLY TOBACCO MARKET NEWS REPORT— Type 11(b)

The following table shows average prices by grade for tobacco on the Oxford, N. C. market this week and this season through Thursday, January 28, 1937.

Averages Based on 20 or More Lots of Each Grade—
Price Quotations are in Dollars per 1^c Lbs.

U. S. Grade	Week Ending Jan. 28 1937	Season Through Jan. 28 1937
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	\$	\$
Wrappers		
A2L	—	58.00
A2F	—	54.00
Leaf		
B1L	—	50.00
B1F	—	48.00
B1R	—	46.00
B2L	—	43.00
B2F	45.00	41.00
B2R	—	38.00
B3L	—	36.00
B3LT	—	32.00
B3LV	—	29.00
B3F	37.00	33.00
B3FK	—	19.00
B3FM	—	25.00
B3FT	—	29.00
B3FV	33.00	26.00
B3R	32.00	28.00
B3RK	—	17.50
B3RV	—	22.00
B3D	—	26.00
B3GL	—	22.50
B3GF	—	19.50
B4L	—	28.00
B4LT	—	24.50
B4LV	26.00	21.00
B4F	26.00	22.00
B4FK	—	13.00
B4FM	—	17.50
B4FT	—	20.00
B4FV	21.50	17.50
B4R	20.50	17.50
B4RK	—	11.50
B4RT	—	17.00
B4RV	—	14.25
B4D	—	13.25
B4GL	—	15.50

B4GF	—	12.25
B5L	—	16.00
B5LT	—	10.50
B5LV	—	12.75
B5F	16.00	12.00
B5FK	—	8.25
B5FM	—	10.00
B5FT	—	10.00
B5FV	12.50	9.75
B5R	9.50	8.00
B5RK	—	6.50
B5RM	—	6.25
B5RT	—	7.00
B5RV	7.00	6.25
B5D	6.25	6.00
B5GL	9.00	9.00
B5GF	7.25	6.75
B5GD	—	3.75
B6L	—	6.50
B6F	5.50	5.00
B6FT	—	4.50
B6R	3.75	3.75
B6L	2.50	3.00
B6GL	4.00	4.25
B6GF	3.50	3.50
B6GD	3.00	2.75

Smoking Leaf

H1F	49.00	44.00
H1R	—	41.00
H2F	45.00	39.00
H2R	—	37.00
H3F	41.00	35.00
H3R	35.00	30.00
H4F	32.00	26.00
H4R	26.00	21.00
H5F	21.00	15.50
H5R	13.50	11.25
H6F	8.00	7.25
H6R	5.00	5.50

Cutters

C1L	—	56.00
C1F	—	53.00
C2L	—	49.00

C2F	—	50.00
C3L	—	46.00
C3F	—	44.00
C4L	—	42.00
C4LV	—	36.00
C4F	—	41.00
C4FV	—	37.00
C5L	—	39.00
C5LV	—	33.00
C5F	—	38.00
C5FK	—	24.50
C5FV	—	31.00
Lugs		
X1L	45.00	39.00
X1LV	—	33.00
X1F	—	38.00
X1FV	—	32.00
X1R	—	34.00
X2L	—	35.00
X2LV	—	29.00
X2F	40.00	33.00
X2FK	—	20.50
X2FM	—	27.00
X2FV	—	28.00
X2R	—	29.00
X3L	—	27.00
X3LV	—	21.00
X3F	34.00	24.50
X3FK	—	15.00
X3FM	—	18.00
X3FV	—	19.00
X3R	—	18.00
X3GL	—	15.50
X3GF	—	12.75
X4L	—	15.50
X4F	16.00	12.50
X4R	—	9.00
X4GL	—	8.50
X4GF	—	7.25
X5L	—	7.00
X5F	5.50	5.75
X5R	—	4.75
X5GL	—	5.00
X5GF	—	3.75

Priming Lugs

P1L	—	37.00
P1F	—	35.00
P2L	—	32.00
P2F	—	30.00
P3L	—	23.00
P3F	—	20.50
P3G	—	14.00
P4L	—	12.75
P4F	—	10.00
P4G	—	7.50
P5L	—	6.50
P5F	—	5.25
P5G	—	3.50

Nondescript

N2B	2.25	2.00
N3B	1.25	1.50
N1X	2.00	2.75
N2X	2.25	2.00
N2G	1.75	1.75
N3G	2.00	1.50

Comments: Volume of sales was heavy on Monday and light the remainder of the week. Offerings consisted principally of fourth to sixth quality leaf, third to sixth quality smoking leaf, and third and fourth quality lugs. Leaf (B group) continued to predominate. The offerings included a fairly large volume of nondescript tobacco. Average prices by group show small percentage decreases in leaf, smoking leaf and lugs.

Due to the small volume of offerings, no more daily reports will be issued during the remainder of this season. The weekly report will be issued as usual.

KEY TO STANDARD GRADE MARKS FOR
(406) FLUE-CURED TOBACCO

GROUPS—A-Wrappers, B-Leaf, H-Smoking Leaf, C-Cutters, X-Lugs, P-Priming Lugs, N-Nondescript.

QUALITIES—1-First quality, 2-Second quality, 3-Third quality, 4-Fourth quality, 5-Fifth quality, 6-Sixth quality.

COLORS—L-Lemon, F-Orange, R-Mahogany, D-Dark Red, G-Green.

SPECIAL FACTORS—K-Off color, M-Mixed, T-Tips, V-Greenish Tinged, U-Unsound, W-Doubtful keeping order.

For example: B4F designates leaf, fourth quality, and orange color.

Note: Tobacco on the Oxford, N. C. market officially graded only at the following warehouses: Banner, Owen No. 1 and Owen No. 2.

Issued: 11:30 A. M.

UNITED STATES DEPARTMENT

(407) OF AGRICULTURE
Bureau of Agricultural Economics

Lynchburg, Va.
February 6, 1937

WEEKLY TOBACCO MARKET NEWS REPORT— TYPE 11(b)

The following table shows average prices by grade for tobacco on the Oxford, N. C. market this week and this season through Thursday, February 4, 1937.

Averages Based on 20 or More Lots of Each Grade—
Price Quotations are in Dollars per 100 Lbs.

U. S. Grade	Week Ending Feb. 4 1937	Season Through Feb. 4 1937
	\$	\$
Wrappers		
A2L	—	58.00
A2F	—	54.00
Leaf		
B1L	—	50.00
B1F	—	48.00
B1R	—	46.00
B2L	—	43.00

B2F	—	41.00
B2R	—	38.00
B3L	—	36.00
B3LT	—	32.00
B3LV	—	29.00
B3F	—	33.00
B3FK	—	19.00
B3FM	—	25.00
B3FT	—	29.00
B3FV	33.00	26.00
B3R	—	28.00
B3RK	—	17.50
B3RV	—	22.00
B3D	—	26.00
B3GL	—	23.00
B3GF	—	19.50
B4L	—	28.00
B4LT	—	24.50
B4LV	—	21.00
B4F	—	22.00
B4FK	—	13.00
B4FM	—	17.50
B4FT	—	20.00
B4FV	—	17.50
B4R	—	17.50
B4RK	—	11.50
B4RT	—	17.00
B4RV	—	14.25
B4D	—	13.25
B4GL	—	15.50
B4GF	—	12.25
B5L	—	16.00
B5LT	—	10.50
B5LV	—	12.75
B5F	14.25	12.00
B5FK	—	8.25
B5FM	—	10.00
B5FT	—	10.00
B5FV	—	9.75
B5R	8.50	8.00
B5RK	—	6.50
B5RM	—	6.25
B5RT	—	7.00
B5RV	—	6.25
B5D	—	6.00

B5GL	—	9.00
B5GF	—	6.75
B5GD	—	3.75
B6L	—	6.50
B6F	5.00	5.00
B6FT	—	4.50
B6R	4.00	3.75
B6D	—	3.00
B6GL	—	4.25
B6GF	3.25	3.50
B6GD	—	2.75

Smoking Leaf

H1F	—	44.00
H1R	—	41.00
H2F	—	40.00
H2R	—	37.00
H3F	41.00	35.00
H3R	—	30.00
H4F	33.00	26.00
H4R	—	21.00
H5F	20.00	15.50
H5R	—	11.25
H6F	—	7.25
H6R	—	5.50

Cutters

C1L	—	56.00
C1F	—	53.00
C2L	—	49.00
C2F	—	50.00
C3L	—	46.00
C3F	—	44.00
C4L	—	42.00
C4LV	—	36.00
C4F	—	41.00
C4FV	—	37.00
C5L	—	39.00
C5LV	—	33.00
C5F	—	38.00
C5FK	—	24.50
C5FV	—	31.00

Lugs

X1L	—	39.00
X1LV	—	33.00

X1F	—	38.00
X1FV	—	32.00
X1R	—	34.00
X2L	—	35.00
X2LV	—	30.00
X2F	—	33.00
X2FK	—	20.50
X2FM	—	27.00
X2FV	—	28.00
X2R	—	29.00
X3L	—	27.00
X3LV	—	21.00
X3F	—	24.50
X3FK	—	15.00
X3FM	—	18.00
X3FV	—	19.00
X3R	—	18.00
X3GL	—	15.50
X3GF	—	12.75
X4L	—	15.50
X4F	—	12.50
X4R	—	9.00
X4GL	—	8.50
X4GF	—	7.25
X5L	—	7.00
X5F	—	5.75
X5R	—	4.75
X5GL	—	5.00
X5GF	—	3.75

Priming Lags

P1L	—	37.00
P1F	—	35.00
P2L	—	32.00
P2F	—	30.00
P3L	—	23.00
P3F	—	20.50
P3G	—	14.00
P4L	—	12.75
P4F	—	10.00
P4G	—	7.50
P5L	—	6.50
P5F	—	5.25
P5G	—	3.50

Nondes		
N2B	2.00	2.00
N3B	—	1.50
N1X	—	2.75
N2X	—	2.00
N2X	2.25	1.75
N3G	—	1.50

Comments: The volume of offerings was light on the Oxford market this week. The principal offerings consisted of fifth and sixth quality leaf, third to fifth quality smoking leaf, and second to fifth quality lugs. Leaf (B group) predominated. The offerings of cutters were negligible in volume. A relatively large volume of non-descript tobacco was included in the offerings. The Oxford market closed for the season on Friday, February (408) 5, 1937.

KEY TO STANDARD GRADE MARKS FOR FLUE-CURED TOBACCO

GROUPS—A-Wrappers, B-Leaf, H-Smoking Leaf, C-Cutters, X-Lugs, P-Priming Lugs, N-Non-descript.

QUALITIES—1-First quality, 2-Second quality, 3-Third quality, 4-Fourth quality, 5-Fifth quality, 6-Sixth quality.

COLORS—L-Lemon, F-Orange, R-Mahogany, D-Dark Red, G-Green.

SPECIAL FACTORS—K-Off color, M-Mixed, T-Tips, V-Greenish Tinged, U-Unsound, W-Doubtful keeping order.

For example: B4F designates leaf, fourth quality, and orange color.

Note: Tobacco on the Oxford, N. C. market officially graded only at the following warehouses: Banner, Owen No. 1 and Owen No. 2.

Issued: 11:30 A. M.

UNITED STATES DEPARTMENT

(409) OF AGRICULTURE

Bureau of Agricultural Economics

Lynchburg, Va.

February 9, 1937

SEASON TOBACCO MARKET NEWS REPORT—
TYPE 11(b)

The following table shows average prices by grade for tobacco on the Oxford, N. C. market for the 1936 season, compared with the averages for the 1935 season.

Averages Based on 20 or More Lots of Each Grade—
Price Quotations are in Dollars per 100 Lbs.

U. S. Grade	1936 Season	1935 Season
	\$	\$
Wrappers		
A2L	58.00	—
A2F	54.00	—
Leaf		
B1L	50.00	42.00
B1F	48.00	39.00
B1R	46.00	35.00
B2L	43.00	35.00
B2F	41.00	31.00
B2R	38.00	30.00
B3L	36.00	27.00
B3LT	32.00	—
B3LV	29.00	—
B3F	33.00	23.50
B3FK	19.00	—
B3FM	25.00	—
B3FT	29.00	—
B3FV	26.00	—
B3R	28.00	21.50
B3RK	17.50	—
B3RV	22.00	—
B3D	26.00	15.00
B3GL	23.00	18.00
B3GF	19.50	—
B4L	28.00	19.50
B5LT	24.50	—

B4LV	21.00	—
B4F	22.00	16.00
B4FK	13.00	—
B4FM	17.50	—
B4FT	20.00	—
B4FV	17.50	—
B4R	17.50	13.00
B4RK	11.50	—
B4RT	17.00	—
B4RV	14.25	—
B4D	13.25	9.25
B4GL	15.50	15.00
B4GF	12.25	—
B5L	16.00	14.00
B5LT	10.50	—
B5LV	12.75	—
B5F	12.00	10.00
B5FK	8.25	—
B5FM	10.00	—
B5FT	10.00	—
B5FV	9.75	—
B5R	8.00	7.00
B5RK	6.50	—
B5RM	6.25	—
B5RT	7.00	—
B5RV	6.25	—
B5D	6.00	5.50
B5GL	9.00	10.25
B5GF	6.75	—
B5GD	3.75	—
B6L	6.50	—
B6F	5.00	5.00
B6FT	4.50	—
B6R	3.75	4.00
B6D	3.00	3.50
B6GL	4.25	5.50
B6GF	3.50	—
B6GD	2.75	—

Smoking Leaf

H1F	44.00	36.00
H1R	41.00	36.00
H2F	40.00	30.00
H2R	37.00	29.00
H3F	35.00	24.00

H3R	30.00	22.00
H4F	26.00	17.00
H4R	21.00	14.25
H5F	15.50	11.00
H5R	11.25	8.75
H6F	7.25	7.00
H6R	5.50	5.50

Cutters

C1L	56.00	47.00
C1F	53.00	46.00
C2L	49.00	43.00
C2F	50.00	40.00
C3L	46.00	38.00
C3F	44.00	36.00
C4L	42.00	34.00
C4LV	36.00	—
C4F	41.00	33.00
C4FV	37.00	—
C5L	39.00	30.00
C5LV	33.00	—
C5F	38.00	28.00
C5FK	24.50	—
C5FV	31.00	—

Lugs

X1L	39.00	29.00
X1LV	33.00	—
X1F	38.00	27.00
X1FV	32.00	—
X1R	34.00	25.00
X2L	35.00	23.00
X2LV	30.00	—
X2F	33.00	21.00
X2FK	20.50	—
X2FM	27.00	—
X2FV	28.00	—
X2R	29.00	17.50
X3L	27.00	16.00
X3LV	21.00	—
X3F	24.50	14.00
X3FK	15.00	—
X3FM	18.00	—
X3FV	19.00	—
X3R	18.00	11.25

X3GL	15.50	13.00
X3GF	12.75	—
X4F	15.50	9.75
X4F	12.50	8.50
X4R	9.00	7.25
X4GL	8.50	8.00
X4GF	7.25	—
X5L	7.00	7.00
X5F	5.75	5.25
X5R	4.75	4.50
X5GL	5.00	—
X5GF	3.75	—

Priming Lugs

P1L	37.00	26.00
P1F	35.00	23.50
P2L	32.00	20.50
P2F	30.00	19.00
P3L	23.00	13.75
P3F	20.50	12.00
P3G	14.00	11.50
P4L	12.75	8.50
P4F	10.00	7.50
P4G	7.50	6.00
P5L	6.50	5.50
P5F	5.25	5.25
P5G	3.50	4.75

Nondescript

N2B	2.00	—
N3B	1.50	—
N1X	2.75	3.50
N2X	2.00	3.25
N2G	1.75	3.00
N3G	1.50	—

Comments: The Oxford, North Carolina market opened (410) for the 1936 season Tuesday, September 22, 1936, and closed Friday, February 5, 1937. Tobacco was officially graded at all warehouses from the opening through Thursday, November 5. After that date official grading was furnished only at the following warehouses: Banner, Owen No. 1 and Owen No. 2.

The graded offerings consisted principally of fourth.

to sixth quality leaf; third to fifth quality smoking leaf; fourth and fifth quality cutters; second to fourth quality lugs and priming lugs. A small volume of wrappers was included in the offerings. Leaf (B group) predominated, with lugs (X group) and smoking leaf (H group) respectively next in volume. Fourth and fifth qualities composed the bulk of offerings.

Average prices this season compared with those for the 1935 crop are higher by group as follows: Leaf, 26%; smoking leaf, 30%; cutters, 22%; lugs, 44%; priming lugs 44%.

All average prices for individual grades exceeded the 1935 crop averages except in fifth and six qualities.

KEY TO STANDARD GRADE MARKS FOR FLUE-CURED TOBACCO

GROUPS—A-Wrappers, B-Leaf, H-Smoking Leaf, C-Cutters, X-Lugs, P-Priming Lugs, N-Nondescript.

QUALITIES—1-First quality, 2-Second quality, 3-Third quality, 4-Fourth quality, 5-Fifth quality, 6-Sixth quality.

COLORS—L-Lemon, F-Orange, R-Mahogany, D-Dark Red, G-Green.

SPECIAL FACTORS—K-Off color, M-Mixed, T-Tips, V-Greenish Tinged, U-Unsound, W-Doubtful keeping order.

For example: B4F designates leaf, fourth quality, and orange color.

Issued: 4:00 P. M.

DEFENDANT'S EXHIBIT 13.

(411) Filed July 1, 1937

	JOHNSONS		BANNER		MANGUM	
	Pounds	Dollars	Pounds	Dollars	Pounds	Dollars
	(100		(100)		(100)	
American	2201	52760	2603	59618	2372	63254
Adams	6113	112337	7380	114234	5835	106224
Export	4015	87145	5243	111592	5298	126233
Imperial	6266	400180	5643	182543	5981	194061
L & M	3891	93810	5274	124941	4309	106298
Penn	1486	13829	2218	14663	2201	10053
Reynolds	3967	134958	5075	167702	4434	148642

(Identified each one
by check mark as
they are identified)

(Identified by
Mr. Hamlet
per Johnson Warehouse)

DEFENDANT'S EXHIBIT 14.

(412) Filed July 1, 1937.

OWEN W Ho No. 1.

Season Sales

1936-37

	POUNDS	MONEY
W. A. Adams Tob Co	706,128	115,172.76
American Suppliers	241,440	57,434.14
Ellis M Penn Tob Co	245,354	17,539.29
R. J. Reynolds Tob Co	479,790	156,471.18
Imperial Tob Co	545,734	170,239.20
Liggett & Myers Tob Co	521,812	123,442.52
Export Leaf Tob Co	611,838	144,537.44
Leaf	193,728	28,930.78
M. E. King	11,662	1,642.13
L. Cutts	278	13.90
G. B. Watkins	1,942	250.07

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P. N. Cutts	4,450	495.81
C. W. Farrabow	8,064	1,078.39
L. N. Hobgood	232	32.34
C. F. Hobgood	1,148	150.92
J. W. Morton	7,550	878.50
W. P. Brogden	3,572	358.54
C. H. D. Forte	132	16.50
H. H. Hicks	2,292	404.15
Geo. Daniel	376	42.36
Thomas Royster	3,920	547.57
U. D. Keese	1,520	145.31
R. C. Watkins, Jr.	1,086	183.97
R. G. Wilkerson	400	21.80
Banner Who	5,192	62.33
(413) E. F. Currin	90	4.50
Allen Carrington	7,288	1,327.64
L. D. Voight	5,944	856.04
G. D. Gholson	746	92.20
Mangum & Blackwell	1,862	329.44
J. W. Wood	8,618	1,150.23
L. A. Hart	10,410	1,505.27
L. D. Blackwell	11,026	1,432.85
J. P. Meadows	558	86.63
J. C. Williams	1,368	222.06
Ray Shotwell	9,730	1,450.84
	<hr/>	<hr/>
	3,657,280	828,549.60

DEFENDANT'S EXHIBIT 14-a

(414) \ Filed July 1, 1937

Jno. S. Watkins	J. W. Pleasants	Tom Woods
W. L. Gregory		Dixie Davis

Buyers will please examine calculations daily

Oxford, N. C. 193

SUMMARY OF PURCHASES

Bought of ———OWEN WAREHOUSE NO. 2

For the Sale of Leaf Tobacco

NUMBER	POUNDS	AMOUNT
Imperial	421,362	137,280.14
Export	345,952	69,266.23
N & M	366,676	84,041.29
American	213,076	52,044.43
Reynolds	470,764	151,896.35
Adams	543,618	88,066.11
Penn	159,814	10,112.81
G. B. Watkins	2,724	1,075.47
Yancey Bros	11,504	1,819.31
Fleming Whse	2,044	176.39
Hart & Co	216	12.96
L. D. Blackwell	3,874	595.10
Jno. C. Williams	6,616	1,357.95
M. E. King	9,626	1,253.89
Charlie Fort	712	134.56
Mangum & Blackwell	1,902	542.26
Dick Watkins	3,838	676.86
J. W. Morton	11,674	1,585.81
C. F. Hobgood	854	167.45
R. L. Cutts	592	61.49
W. P. Brogden	4,254	487.84
H. R. Shotwell	5,668	1,043.59
R. C. O'Brien	1,450	142.60
P. N. Cutts	658	99.30
L. N. Hobgood	2,770	271.27
(415) C. W. Farabow	6,960	1,032.56
Thomas Royster	1,394	213.82
L. D. Vaught	7,384	1,000.45
U. D. Keesee	386	29.99
A. C. Carrington	6,252	1,177.59
Wood & Carrington	5,692	839.43
G. O. Gholson	826	142.79
A. H. Tunstall	926	84.54
H. H. Hicks	7,386	1,220.66
Banner Whse	10,548	111.60
Mangum Whse	236	38.94
Farmers Whse	428	179.76

DEFENDANT'S EXHIBIT 15.

(416)

Filed July 1, 1937

W. A. Adams	583,536	106,223.71
R. J. Reynolds	443,370	148,642.44
Imperial	598,068	194,061.28
Penn Tob Co	220,112	16,052.61
Export Tob Co	529,844	126,232.71
Liggett & Myers	430,850	106,298.47
American	237,196	63,253.50
John Williams	1,646	332.04
U. D. Keesee	27,074	1,884.57
M. E. King	2,318	279.75
R. L. Cutts	812	68.02
H. R. Shotwell	14,584	2,135.79
P. N. Cutts	9,044	1,066.18
G. B. Watkins	920	80.98
Mangum & Blackwell	9,684	1,703.23
L. D. Blackwell	15,510	1,517.38
R. C. Watkins	670	122.70
W. P. Brogden	1,486	168.67
C. C. Yancey	2,512	471.18
L. A. Hart	13,578	2,597.28
Chas. W. Farrabow	2,906	300.14
J. P. Meadows	2,268	563.18
Jno. Woods	5,584	909.21
Allen Carrington	5,500	922.68
G. D. Gholson	246	24.60
L. N. Hobgood	532	49.10
C. F. Hobgood	3,288	563.25
R. C. O'Brien	3,376	270.48
L. D. Vot	3,458	526.24
H. H. Hicks	1,136	123.21
Wilkerson & R	3,792	585.88
A. H. Tunstall	756	94.77
CDH Forte	424	83.28
Banner Whse	2,866	34.30

(417)

ASSIGNMENT OF ERRORS.

Filed June 7, 1937.

(Style of court and Title omitted)

Come now Henry A. Wallace, Secretary of Agriculture of the United States, J. O. Carr, United States Attorney for the Eastern District of North Carolina, and W. R. Wilson, Agent and Representative of the Secretary of Agriculture for the United States and in Charge of the Grading of Tobacco Upon the Oxford Tobacco Market, defendants in the above-entitled cause, by their counsel J. O. Carr, United States Attorney for the Eastern District of North Carolina, and John H. Manning, Assistant United States Attorney for the said District, and Morris R. Clark, Special Assistant to the Attorney General (acting pursuant to the directions of the Attorney General of the United States and the Department of Justice) and file and make the following assignment of errors upon which they will rely in the prosecution of the appeal in the above-entitled cause from a permanent injunction prayed for in the bill of complaint and granted by said Court, which said permanent injunction was entered in the records of said (418) cause and filed in the office of the Clerk of said Court on April 24, 1937.

The District Court of the United States for the Eastern District of North Carolina erred:

1. In finding as a fact that the sale of tobacco on the floors of complainants' warehouses is an intrastate enterprise and that each of complainants is engaged exclusively in an intrastate enterprise.
2. In finding as a fact that many of complainants' patrons are opposed to federal inspection of tobacco.
3. In finding as a fact that complainants have lost substantial business or suffered substantial money losses as a result of such opposition to the Act on the part of their patrons.

4. In finding as a fact that the complainants have suffered and sustained, and will continue to suffer and sustain, irreparable loss and damage as a result of the operation and application of said Act.

5. In finding as a fact that complainants have no adequate remedy at law.

6. In finding as a fact that growers of tobacco retain their title and their control of their tobacco until they accept payment from the purchasers thereof.

7. In holding as a matter of law that tobacco grown, harvested and cured in North Carolina and placed on the floors of complainants' warehouses and sold after the required federal inspection is intrastate in character.

8. In holding as a matter of law that the Tobacco Inspection Act is unconstitutional in its substance in that it violates the Fifth Amendment of the Constitution of the United States.

9. In holding as a matter of law that the Tobacco Inspection Act is unconstitutional in its application in that it violates the Fifth Amendment of the Constitution of the United States.

10. In holding as a matter of law that the Tobacco Inspection Act is applied in a discriminatory manner (419) because federal inspection of tobacco is not required at any tobacco markets in North Carolina except Oxford, Goldsboro and Farmville.

11. In holding as a matter of law that the application of the Tobacco Inspection Act to the tobacco markets at Oxford, Goldsboro and Farmville and not to the other tobacco markets in North Carolina is without valid factual reason and without affirmative significance in law or equity and cannot be enforced.

12. In holding as a matter of law that tobacco does not enter the stream of interstate commerce and be-

come an interstate commodity from the time it enters complainants' warehouses.

13. In holding as a matter of law that tobacco enters the stream of interstate commerce and becomes an interstate commodity only after it is delivered to the purchaser at the sale on the floors of complainants' warehouses.

14. In holding as a matter of law that said Act operates against complainants in a discriminatory manner and to their irreparable injury and damage.

15. In holding as a matter of law that the enforcement of the provisions of the Act on local auction markets by means of federal inspection there conducted constitutes an invasion by the Congress of the Legislative Forum reserved to the several States by the Constitution.

16. In holding as a matter of law that the Act invalidly delegates legislative power to the Secretary of Agriculture.

17. In holding as a matter of law that the Act invalidly delegates legislative power to the growers of tobacco.

18. In holding as a matter of law that the Act invalidly delegates legislative power to the Secretary of Agriculture and in turn permits said Secretary to invalidly re-delegate such legislative power to the growers (420) of tobacco.

19. In holding as a matter of law irreparable injury and damage have been, and will continue to be, suffered by complainants as a result of the discriminatory character, provisions and application of the Act.

20. In denying defendants' motion to dismiss the bill of complaint made at the conclusion of complainants' case upon the ground that complainants had failed to show any injury or damage sufficient to invoke the jurisdiction of a court of equity.

21. In denying defendants' motion to dismiss as to defendant Henry A. Wallace made prior to the trial of said cause on the ground that said defendant was a resident of Washington, District of Columbia, and is not within the jurisdiction of said Court, nor had he been served with process within said jurisdiction.

22. In granting a permanent injunction to complainants restraining defendants from enforcing the provisions of said Act against the complainants.

WHEREFORE the said parties named in the first paragraph of this assignment of errors pray that said permanent injunction made and entered by said Court on the twenty-fourth day of April, 1937, be reversed and a decree entered herein dismissing the bill of complaint.

J. O. CARR
J. O. CARR,
United States Attorney

JOHN H. MANNING
JOHN H. MANNING,
Assistant United States Attorney

MORRIS R. CLARK
MORRIS R. CLARK,
Special Assistant to the Attorney General.

PRAECIPE FOR TRANSCRIPT OF RECORD.

(421) Filed July 1, 1937

(Style of court and Title omitted)

TO THE CLERK OF THE ABOVE COURT:

You are hereby requested to make a transcript of record to be filed in the United States Circuit Court of Appeals for the Fourth Circuit, pursuant to an appeal allowed in the above entitled cause and to include in such transcript of record the papers and exhibits list-

ed in the stipulation and agreement hereto attached as a part hereof.

Dated July 1st, 1937.

J. O. CARR,
J. O. CARR,
United States Attorney.

JOHN H. MANNING,
JOHN H. MANNING,
Assistant United States Attorney.

MORRIS R. CLARK,
MORRIS R. CLARK,
Special Assistant to the Attorney
General.

Counsel for Appellants.

**STIPULATION OF COUNSEL AS TO CONTENTS OF
RECORD ON APPEAL.**

(422)

Filed July 1, 1937

(Style of Court and Title Omitted).

It is hereby stipulated and agreed that the following shall constitute the record on appeal in the above entitled cause:

1. Bill of Complaint, Order to Show Cause, and Security for Costs.
2. Special appearance of Henry A. Wallace, Secretary of Agriculture for the United States.
3. Response to Order to Show Cause.
4. Opinion of the court granting preliminary injunction.
5. Restraining order issued pursuant to preliminary injunction.
6. Security for costs.

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7. Order extending defendants' time to answer to December 1, 1936.

8. Order extending defendants' time to answer to December 20, 1936.

9. Order extending defendants' time to answer to January 2, 1937.

10. Answer of defendants to Bill of Complaint.

11. Order designating special term at Elizabeth (423) City, North Carolina, for trial of the case.

12. A statement in narrative form of all the evidence with proper index adduced at the trial in the District Court for the Eastern District of North Carolina, as provided by Rule 38 of the Circuit Court of Appeals.

13. Opinion of the court granting permanent injunction.

14. Permanent injunction.

15. The following exhibits offered at the trial of the above cause by the defendants:

Exhibit No. 1. The record of sales of tobacco on Oxford market for the seasons 1935 and 1936, prepared by W. H. Rhodes.

Exhibit No. 2. A tobacco sales ticket containing place for Government's form thereon similar to the tickets used on the Oxford market during the 1936 tobacco selling season.

Exhibit No. 3. A publication of the Department of Agriculture entitled "American Tobaccos, Types, Uses and Markets," written by Charles E. Gage, Senior Marketing Specialist in charge of Tobacco Section, Bureau of Agricultural Economics, and, in particular, pages 70 to 76, inclusive, thereof.

Exhibit No. 4. A report published by the Federal Trade Commission, entitled "Marketing of Leaf Tobacco in the Flue-Cured Districts of North Carolina and Georgia," and, in particular, pages 47 to 54, inclusive thereof.

Exhibit No. 5. Rules and Regulations of the Secretary of Agriculture under the Tobacco Inspection Act of August 23, 1935, effective January 2, 1936.

Exhibit No. 6. A publication of the United States Department of Agriculture, Bureau of Agricultural Economics, entitled "Classification of Leaf Tobacco Covering Classes, Types and Groups of Grades."

Exhibit No. 7. Press release of the United States Department of Agriculture, Bureau of Agricultural Economics, dated July 27, 1936, concerning the referendum to be held among the growers selling tobacco on (424) the Oxford market.

Exhibit No. 8. Copy of a letter dated July 30, 1936, signed by Frank B. Wilkinson, Senior Tobacco Marketing Specialist of the United States Department of Agriculture, Bureau of Agricultural Economics, and addressed to county agents in the flue-cured tobacco districts of Virginia and North Carolina explaining the method to be followed in conducting the referendum among the growers selling tobacco on the Oxford market.

Exhibit No. 9. A copy of the ballot used in the referendum conducted among the growers selling tobacco on the Oxford market.

Exhibit No. 10. That portion of the Federal Register of August 27, 1936, which contains the order of Henry A. Wallace, Secretary of Agriculture of the United States designating Oxford, North Carolina, as a tobacco auction sales market pursuant to the provisions of the Tobacco Inspection Act of August 23, 1935.

Exhibit No. 11. A copy of the document entitled "Official Standard Grades for Flue-Cured Tobacco" dated August 7, 1936, signed by R. G. Tugwell, Acting Secretary of Agriculture of the United States, and prepared under the authority of the Tobacco Inspection Act of August 23, 1935.

Exhibit No. 12. A copy of a document published by the Department of Agriculture under date of February 9, 1937, entitled "Season Tobacco Market News Report Type 11(b)", and the table showing the average prices by grade for tobacco sold on the Oxford, North Caro-

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ing service on B. S. Royster, Jr., Attorney for D.
G. Currin, et al, complainants.

- 4— Order extending time for certifying transcript of
record dated July 3, 1937, and filed July 6, 1937.

ORDER TO TRANSMIT RECORD ON APPEAL.

And, thereupon, it is ordered by the Court here that
a transcript of the record and proceedings in the cause
aforesaid, together with all things thereunto relating
be transmitted to the said United States Circuit Court
of Appeals for the Fourth Circuit: and the same is trans-
mitted accordingly.

Teste:

THOMAS DIXON,
THOMAS DIXON,
Clerk.

CLERK'S CERTIFICATE.

I, Thomas Dixon, Clerk of the District Court of the
United States for the Eastern District of North Caro-
lina, at Raleigh, in and for said district, do hereby certi-
fy that the foregoing is a true and correct transcript of
the record and proceeding in the matter of D. T. Currin,
et al vs. Henry A. Wallace, Secretary of Agriculture for
the United States, et al, as appears from the records in
my office.

Witness my hand and official seal in the City of
Raleigh, N. C., this 28th day of July, 1937.

THOMAS DIXON,
THOMAS DIXON,
Clerk U. S. District Court.

(SEAL)

**STIPULATION TO OMIT PRINTING OF CERTAIN
PARTS OF RECORD.**

(428)

Filed August 9, 1937.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS
FOURTH CIRCUIT.

Number 4224

Wallace, et als

v.

Currin, et als.

TO THE HONORABLE CLAUDE M. DEAN, CLERK
UNITED STATES CIRCUIT COURT OF APPEALS,
FOURTH CIRCUIT:

Pursuant to the provisions of Section 3, Rule 23, United States Circuit Court of Appeals, Fourth Circuit, it is stipulated by and between John H. Manning, Assistant United States Attorney, of counsel for the appellants, and Royster and Royster, attorneys for the appellees, that only that part of appellants' exhibit Number 3 beginning with "How Tobacco is sold" on page 70 and ending at the bottom of page 76 shall be printed as a part of the printed record in the above entitled cause.

It is further agreed that this stipulation may be filed with the Clerk, United States Circuit Court of Appeals, Fourth Circuit, as his authority to direct the printer to print only that part of the exhibit called for in this stipulation.

This the 5th day of August, 1937.

JOHN H. MANNING,
Asst. United States Attorney of
Counsel for Appellants.

ROYSTER & ROYSTER,
Attorneys for Appellees.

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lina, market for the 1936 season, as compared with the average prices for the 1935 season.

Exhibit No. 13. A tabulation made from the books of the Johnson Warehouse by Mr. Hamlet.

Exhibit No. 14. A tabulation made from the books of Owen Warehouse No. 1, showing pounds of tobacco sold, value thereof in dollars, and names of buyers thereof, prepared by John S. Watkins.

Exhibit No. 14(a). Tabulation from the books of Owen Warehouse No. 2, showing pounds of tobacco sold, value thereof in dollars, and names of buyers (425) thereof prepared by John S. Watkins.

Exhibit No. 15. Tabulation from the books and records of the Mangum Warehouse showing names of buyers, number of pounds purchased, and amount paid for tobacco sold at that warehouse during the 1936-1937 tobacco selling season, prepared by J. C. Adcock.

16. Assignments of error filed June 7th, 1937.

17. Praecepte.

18. Stipulation for Clerk to print the record under Rule 23, dated June 30th, 1937.

J. O. CARR,

J. O. CARR,

United States Attorney.

JOHN H. MANNING,

JOHN H. MANNING,

Assistant United States Attorney.

MORRIS R. CLARK,

MORRIS R. CLARK,

Special Assistant to the Attorney General.

Counsel for Appellants.

ROYSTER & ROYSTER,

ROYSTER & ROYSTER,

Attorneys for Appellees.

**STIPULATION AS TO PRINTING RECORD UNDER
(426) RULE 23.**

Filed July 1, 1937.

(Style of Court and Title Omitted.)

It is hereby stipulated and agreed that the Clerk of this Court shall make up a transcript of the record in the above styled cause and transmit the same to the Clerk of the United States Circuit Court of Appeals for the Fourth Circuit at Richmond, Virginia, and that it be printed under the supervision of the Clerk of that Court in accordance with Rule 23. This June 30th, 1937.

J. O. CARR,

J. O. CARR,

United States Attorney.

JOHN H. MANNING,

JOHN H. MANNING,

Assistant United States Attorney.

MORRIS R. CLARK,

MORRIS R. CLARK,

Special Assistant to the Attorney General.

Counsel for Appellants.

ROYSTER & ROYSTER,

ROYSTER & ROYSTER,

Counsel for Appellees.

**MEMORANDUM UNDER SECTION 7 OF
(427) RULE 14.**

- 1— Petition for appeal filed June 7, 1937.
- 2— Order allowing appeal filed June 7, 1937.
- 3— Citation. Dated May 31, 1937. Return by U. S. Marshal Eastern District of North Carolina show-

[fol. 383] PROCEEDINGS IN THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FOURTH CIRCUIT

No. 4224

HENRY A. WALLACE, Secretary of Agriculture for the United States, and J. O. Carr, United States District Attorney for the Eastern District of North Carolina, and W. R. Wilson, Agent and Representative of the Secretary of Agriculture for the United States and in Charge of the Grading of Tobacco Upon the Oxford Tobacco Market, Appellants,

versus

D. T. CURRIN, S. M. CUTTS, and H. A. AVERETT, Doing Business as Fleming Warehouse, Oxford, North Carolina; H. L. Thomasson, T. B. Williams and J. C. Adcock, Doing Business as Mangum Warehouse, Oxford, North Carolina; C. R. Watkins and J. R. Watkins, Doing Business as The Johnson Warehouse, Oxford, North Carolina, and D. F. Currin, Doing Business as Farmers Warehouse, Oxford, North Carolina, Appellees

Appeal from the District Court of the United States for the Eastern District of North Carolina, at Raleigh

July 29, 1937, the transcript of record is filed and the cause docketed.

Same day, the original petition for appeal, order allowing appeal, and citation are certified up under section 7 of Rule 14.

Same day, order extending the time to August 10, 1937, [fol. 384] for certifying the transcript of the record to this Court is filed.

Same day, the appearance of James O. Carr, U. S. Attorney, is entered for the appellants.

August 3, 1937, the appearance of John H. Manning, Assistant U. S. Attorney, is entered for the appellants.

August 5, 1937, the appearance of Morris R. Clark, Special Assistant to the Attorney General, is entered for the appellants.

**STIPULATION TO OMIT PRINTING OF CERTAIN PARTS OF RECORD
—Filed August 9, 1937**

(Memo. of Clerk: This stipulation is printed at page 381 of the record and is, therefore, omitted here.)

August 11, 1937, the appearance of B. S. Royster, Jr., is entered for the appellees.

November 12, 1937, twenty-five copies of the printed record are filed.

ARGUMENT OF CAUSE

January 11, 1938, (January term, 1938) cause came on to be heard before Parker, Northcott and Soper, Circuit Judges, and is argued by counsel and submitted.

[fol. 385] **OPINION—Filed April 5, 1938**

**UNITED STATES CIRCUIT COURT OF APPEALS, FOURTH CIRCUIT
No. 4224**

HENRY A. WALLACE, Secretary of Agriculture for the United States, and J. O. Carr, United States District Attorney for the Eastern District of North Carolina, and W. R. Wilson, Agent and Representative of the Secretary of Agriculture for the United States and in Charge of the Grading of Tobacco Upon the Oxford Tobacco Market, Appellants,
versus

D. T. CURRIN, S. M. CUTTS, and H. A. AVERETT, Doing Business as Fleming Warehouse, Oxford, North Carolina; H. L. Thomasson, T. B. Williams and J. C. Adcock, Doing Business as Mangum Warehouse, Oxford, North Carolina; C. R. Watkins and J. R. Watkins, Doing Business as The Johnson Warehouse, Oxford, North Carolina, and D. F. Currin, Doing Business as Farmers Warehouse, Oxford, North Carolina, Appellees

Appeal from the District Court of the United States for the Eastern District of North Carolina, at Raleigh

(Argued January 11, 1938. Decided April 5, 1938)

Before Parker, Northcott and Soper, Circuit Judges

[fol. 386] **Morris R. Clark, Special Assistant to the Attorney General, and John H. Manning, Assistant U. S.**

Attorney, (Robert H. Jackson, Assistant Attorney General; Hugh B. Cox, Robert L. Stern, Special Assistants to the Attorney General; and J. O. Carr, U. S. Attorney, on brief) for Appellants, and B. S. Royster, Jr., (Royster & Royster on brief) for Appellees.

PARKER, Circuit Judge:

This is an appeal from a decree enjoining officials of the Department of Agriculture and the United States Attorney for the Eastern District of North Carolina from enforcing the provisions of the Tobacco Inspection Act of August 23, 1935, 7 U. S. C. A. 511 et seq. The appellees, complainants below, are warehousemen operating tobacco auction warehouses in Oxford, North Carolina. Four questions are presented by the appeal: (1) whether complainants have any standing under the facts as shown to ask the relief prayed; (2) whether the act is a valid regulation of interstate commerce or void as an invasion of the reserved power of the states; (3) whether the act is void as an unconstitutional delegation of legislative power to the Secretary of Agriculture or to the growers of tobacco; and (4) whether the act violates the due process clause of the 5th Amendment.

Sales of tobacco are conducted throughout the tobacco growing sections of the United States according to the same general plan, which is as follows: After the tobacco has been cured and is ready for marketing, the grower grades it as best he can, arranges it in bundles and hauls it to the auction warehouse. It is unloaded at the warehouse and bundles or "hands" of tobacco are placed in baskets and weighed under the supervision of a warehouse employee. [fol. 387] A ticket is placed on each pile, giving the name of the owner, the number of pounds of tobacco in the pile and spaces for the name of the buyer and the price paid. The baskets are arranged in rows with a passageway between, and buyers may then come on the floor and inspect it. Sales are by auction and are conducted with great rapidity, the minimum speed being 360 baskets per hour, or one basket every ten seconds. As soon as a sale is made, a ticket marker places the name of the buyer and the price paid on the ticket. The grower may reject the bid and have the tobacco resold or withdraw it from the warehouse, but unless this is done promptly the buyer removes it and

the sale is complete. Because of the speed with which the sale is conducted, there are many errors in grading which are prejudicial to the grower whose tobacco is being sold and who is generally without the technical knowledge of grading necessary for the protection of his own interest.

To remedy this evil, by establishing and promoting the use of standards of classification and by maintaining an official inspection service and grading the tobacco in advance of sale, as well as by furnishing to the grower information of the market price being paid for tobacco of the several grades, was the purpose of the Act of Congress here under consideration. See *Townsend v. Yeomans* 301 U.S. 441, 452. This was expressed in Report No. 1102 of the 74th Congress, First Session, as follows:

"The first provision of the bill, which applies to tobacco sold on what are known as auction markets, has for its objects (1) the grading of the growers' tobacco by government graders before sale so they will know what grades they are offering for sale, and (2) furnishing the growers with a daily and weekly market news service so they will know what the different grades of tobacco are bringing, and thus put them in position intelligently to accept or reject sales.

[fol. 388] "In order to understand the real objects of this first provision of the bill it is thought that a short statement of the present auction system of selling tobacco is in order. Tobacco is the only major farm crop which is sold at auction. In many localities, particularly in Virginia, North Carolina, South Carolina, Georgia, Florida, West Virginia, and Maryland, and in certain sections of Tennessee, Kentucky, Ohio, Indiana, and Missouri there is no other method of selling tobacco available to growers.

"Tobacco, under the auction system as now conducted, is sold in baskets containing from 10 to 200 or more pounds. These baskets are placed upon the warehouse floor in long rows and the tobacco is sold to the highest bidder at public auction by the warehouseman, who operates on a fee or commission basis and who is supposed to represent the tobacco grower. The sales are made without the grades of the several lots being first determined and without the grower knowing what the same grades are bringing. The selling is extremely rapid, being at a rate, on most markets, of one basket every 10 seconds. The purchasers are the repre-

sentatives of the tobacco companies and sepeculators, commonly called 'pin-hookers', who are experts in the grades of tobacco. There are between 60 and 100 grades in a single type of tobacco, and it is not practical for a farmer to familiarize himself with the technical factors on which these grades are based, or to keep informed as to market prices without a definite system of Government grades.

"Without any standard or guide, farmers sort their tobacco for market, as best they can, into lots of like quality, color, and length, which they commonly refer to as 'grading'. However, the farmer has no definite system of grades of his own, and the private grading systems used by the buyers are kept strictly confidential by them, so without Government standards the farmer has no definite guide for sorting his tobacco. Without a definite standard for sorting, or 'grading' as the farmers call it, farmers generally are unable to class their tobacco correctly to meet the trade's demand. Buyers frequently refuse to bid on lots of tobacco due to the fact that it is not properly sorted. Improperly sorted lots of tobacco usually command a much smaller price [fol. 389] as compared with prices paid for tobacco which is uniformly sorted into lots. Many lots of tobacco after being bought are re-sorted by the buyer into two or three different grades.

"The possession of grade and price information by the buyers, and the lack of it on the part of the growers, places the growers under a severe handicap in the marketing of their tobacco and opens the way to abuses and practices by which farmers are victimized. The picture is simply this: Here is a farmer offering his tobacco for sale through a warehouse at the rate of a basket every 10 seconds, at public auction, to the highest bidder, without the grade being first established and without knowing what similar tobacco is bringing. On the other hand we have the purchaser who is an expert judge of tobacco, who has a well-established private system of grades, and who is in possession of all available information with respect to quality and price. It is the thought of the committee that if the purchaser needs an expert in grades in order to protect his interest in the sale the grower should be accorded the same protection."

The Act, in addition to providing for the establishing of official standards for grading tobacco and for distributing information relative to market supply, demand and prices,

provides for free inspection in those markets in which tobacco moves in interstate commerce and which have been designated by the Secretary of Agriculture to receive the inspection service. The Secretary is authorized to designate for this service auction markets where tobacco moves in commerce, and commerce within the meaning of the Act is defined by Section 1(i) thereof as follows: " 'Commerce' mean commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof; or within any Territory or possession, or the District of Columbia. For the purposes of this [fol. 390] chapter (but not in any wise limiting the foregoing definition) a transaction in respect to tobacco shall be considered to be in commerce if such tobacco is part of that current of commerce usual in the tobacco industry whereby tobacco or products manufactured therefrom are sent from one State with the expectation that they will end their transit, after purchase, in another, including, in addition to cases within the above general description, all cases where purchase or sale is either for shipment to another State or for manufacture within the State and the shipment outside the State of the products resulting from such manufacture." Before any market may be designated by the Secretary he is required to take a referendum vote of the growers who sold tobacco on the market during the preceding marketing season, and he is forbidden to designate any market for the service unless two-thirds of the growers voting in the referendum favor it. Section 5 of the Act, which is the one pertinent to the question here presented, is as follows:

"Sec. 5. That the Secretary is authorized to designate those auction markets where tobacco bought and sold thereon at auction, or the products customarily manufactured therefrom, moves in commerce. Before any market is designated by the Secretary under this section he shall determine by referendum the desire of tobacco growers who sold tobacco at auction on such market during the preceding marketing season. The Secretary may at his discretion hold one referendum for two or more markets or for all markets in a type area. No market or group of markets shall be designated by the Secretary unless two-thirds of the growers voting favor it. The Secretary shall have access

to the tobacco records of the Collector of Internal Revenue and of the several collectors of internal revenue for the purpose of obtaining the names and addresses of growers who sold tobacco on any auction market, and the Secretary shall determine from said records the eligibility of such grower to vote in such referendum, and no grower shall be eligible to vote in more than one referendum. After public notice of not less than thirty days that any auction market [fol. 391] has been so designated by the Secretary, no tobacco shall be offered for sale at auction on such market until it shall have been inspected and certified by an authorized representative of the Secretary according to the standards established under this Act, except that the Secretary may temporarily suspend the requirement of inspection and certification at any designated market whenever he finds it impracticable to provide for such inspection and certification because competent inspectors are not obtainable or because the quantity of tobacco available for inspection is insufficient to justify the cost of such service: Provided, That, in the event competent inspectors are not available, or for other reasons, the Secretary is unable to provide for such inspection and certification at all auction markets within a type area, he shall first designate those auction markets where the greatest number of growers may be served with the facilities available to him. No fee or charge shall be imposed or collected for inspection or certification under this section at any designated auction market. Nothing contained in this Act shall be construed to prevent transactions in tobacco at markets not designated by the Secretary or at designated markets where the Secretary has suspended the requirement of inspection or to authorize the Secretary to close any market."

Sec. 11 of the Act makes any violation of Section 5 a misdemeanor punishable by fine of not more than \$1,000 or imprisonment of not more than one year, or both.

There are forty auction tobacco markets in North Carolina; and in the year 1936 three of these were designated for inspection service under the Act, Oxford, Farmville and Goldsboro. A referendum was held with respect to the Smithfield, N. C. market, but a majority of the votes cast were against the service. The markets at Henderson, twelve miles distant from Oxford, and Durham, thirty miles distant, were not designated. The reason for the designation

of the Oxford and Goldsboro markets seems to have been that free, but not compulsory, inspection and grading service [fol. 392] vice had been maintained by the Secretary at these markets prior to the passage of the Act. As to the character of the commerce at that market, it appears that the larger part of the tobacco there purchased is for shipment beyond the state and that the remainder is purchased by large manufacturers whose products are sold in interstate commerce. It appears that during the week ending October 29, 1936, 2,105,305 pounds of tobacco were sold on the Oxford market, of which only 15% was definitely destined for manufacture in North Carolina. An additional 16% was purchased by manufacturers having plants in both North Carolina and Virginia, and the remaining 69% was for shipment beyond the state, 62.4% thereof being for export. These figures are typical of the interstate character of the tobacco business. In 1935, there were 573,000,000 pounds of flue-cured tobacco grown in North Carolina of which 21% was manufactured within the state and the remaining 79% shipped beyond its borders. The evidence further shows that prior to the completion of the sale of a pile of tobacco no distinction or separation is made between tobacco which will be purchased for manufacture within the state and that which will be purchased for out of state manufacturers. Buyers representing non-resident dealers and manufacturers are present throughout the sale to bid on such of the lots offered as they may desire to purchase; and not until the sale of a particular pile is completed can it be determined whether or not it has been purchased for transportation in interstate commerce.

On the interest of the complainant warehousemen in the controversy, it appears that the tobacco sold belongs to the growers, and not to them, and that, for conducting the sales in their warehouses, they receive a compensation fixed by the law of North Carolina, which is 10 cents per 100 pounds as a weighing fee, 15 cents per 100 pounds as an auctioneer's fee, and 2½% of the money realized on the sale. The extra printing on tickets required by the Act will involve a slight [fol. 393] expense, around \$25.00 for each of the complainants for the season. They contend that they have lost business as a result of the enforcement of the act, and will lose business if it is enforced, by reason of the fact that some growers are opposed to government inspection and will take their tobacco to other markets rather than submit to

it; and, as further evidence of the loss which the act will inflict upon them, they point to the fact that, after the preliminary injunction granted by the court below went into effect and freed them of the inspection, the average prices received by them were higher than the average prices received by competing warehousemen on the same market who were subject to the inspection. Against this, it appears that after the injunction was issued the non-complaining warehousemen, who continued to have the government inspection, received a much larger share of the business of the Oxford market than they had been receiving theretofore, and that the complaining warehousemen received a much smaller share.

Coming to the first question presented by the appeal, i. e., the standing of complainants to maintain the suit, it is difficult to see that they have sustained, or can sustain, any substantial damage as a result of the enforcement of the Act. The matter of difference in prices on which they rely has little probative value, as it may have been due to a variety of circumstances; and we do not see how correct grading can result otherwise than in better prices for the growers and consequently in increased commissions for the warehousemen. The loss of business from growers who do not desire the inspection would seem to be shown by the record to be more than counter-balanced by the gain of business from those who do desire it; and, certainly, the slight additional expense involved in the printing of tickets is hardly sufficient of itself to justify injunctive relief.

We do not think, however, that for these reasons we would be justified in holding that complainants are without standing to question the act. If it is unconstitutional, as they contend, they have a right to operate their business without complying with it; and, if they should attempt to do this, they would incur penalties which would be ruinous to them in the event that it should be upheld. Under such circumstances they are entitled to injunctive relief if the court is of opinion that it is unconstitutional. *Ex Parte Young* 209 U. S. 123, 146; *Stafford v. Wallace* 258 U. S. 495, 512; *Terrace v. Thompson* 263 U. S. 197, 215; *Tyson & Brother v. Blanton* 273 U. S. 418, 428. If it be argued that they would sustain little damage by complying with the Act, the answer is that one need not comply with an act if it be unconstitutional, and should not be required to abandon what he believes to be his right because a mistake

in judgment in that regard might prove ruinous to him. In addition to this, there is unquestionably an actual controversy between the parties entitling complainants to relief under that salutary statute of recent enactment, the declaratory judgment act, 28 U. S. C. A. 400. *Aetna Life Ins. Co. v. Haworth* 300 U. S. 227; *Stephenson v. Equitable Life Assur. Soc.* 4 Cir. 92 F. 2d 406, 409.

We come then to the second question, i. e. whether the Act can be upheld under the Commerce Clause of the Constitution or must be condemned as an invasion of the reserved powers of the states. On this question, it is important to note that the provision of the statute of which complainant is made does not require the government inspection or grading of tobacco, but merely forbids tobacco being offered for sale at auction upon a designated market without such inspection and grading. See Sec. 5, *supra*. It is thus a regulation of the auction sale of tobacco on markets where it is purchased in interstate commerce; and such regulation is clearly within the power of Congress under the Commerce Clause of the Constitution. As said by the Supreme Court in *Shafer v. Farmers' Grain Co.* 268 U. S. 189, 198: "Buying for shipment, and shipping to markets in other states [fol. 395] when conducted as before shown constitutes interstate commerce—the buying being as much a part of it as the shipping." And it may be said of tobacco here, as it was of wheat in that case, that it "is a legitimate article of commerce and the subject of dealings that are nationwide. The right to buy it for shipment, and to ship it, in interstate commerce is not a privilege derived from state laws and which they may fetter with conditions, but is a common right, the regulation of which is committed to Congress and denied to the States by the commerce clause of the Constitution." In that case a state statute requiring the grading of wheat at country elevators, 90% of which was purchased for shipment in interstate commerce, was held void as "a direct regulation of the buying of grain in interstate commerce, and therefore invalid." To like effect are *Lemke v. Farmers Grain Co.* 258 U. S. 50. and *Dahnke-Walker Milling Co. v. Bondurant* 257 U. S. 282. In the case last cited the doctrine here applicable was well stated by Mr. Justice Vandeventer as follows:

"The commerce clause of the Constitution (article 1, sec. 8, cl. 3) expressly commits to Congress and impliedly with-

holds from the several states the power to regulate commerce among the latter. Such commerce is not confined to transportation from one state to another, but comprehends all commercial intercourse between different states and all the component parts of that intercourse. Where goods in one state are transported into another for purposes of sale, the commerce does not end with the transportation, but embraces as well the sale of the goods after they reach their destination and while they are in the original packages. *Brown v. Maryland*, 12 Wheat. 419, 446-447, 6 L. ed. 678; *American Steel & Wire Co. v. Speed*, 192 U. S. 500, 519, 24 S. Ct. 365, 48 L. Ed. 528. On the same principle, where goods are purchased in one state for transportation to another, the commerce includes the purchase quite as much as it does the transportation. *American Express Co. v. Iowa*, 196 U. S. 133, 143, 25 S. Ct. 182, 49 L. Ed. 417. This has been recognized in many decisions construing the commerce clause. * * * In no case has the court made any distinction between buying and selling or between buying for transportation to another state and transporting for sale in another state. Quite to the contrary, the import of the decisions has been that, if the transportation was incidental to buying or selling, it was not material whether it came first or last."

In *Stafford v. Wallace* 258 U. S. 495, the Supreme Court sustained the Packers and Stockyards Act of 1921, 42 Stat. 159, which regulated sales of live stock in stockyards, and the object of which as defined by the court was to secure "the free and unburdened flow of live stock from the ranges and farms of the West and Southwest through the great stockyards and slaughtering centers on the borders of that region, and thence in the form of meat products to the consuming cities of the country in the middle West and East, or, still as live stock, to the feeding and fattening farms in the middle West or East for further preparation for the market". The court found that the stockyards were "but a throat through which the current of commerce flows", which is true of the auction tobacco markets with which we are dealing, and made no distinction between the purchase of animals for local conversion into meat products which were to be sold in interstate commerce and purchases for further transportation and fattening. It based its decision in large measure upon the decision in *Swift & Co. v.*

United States 196 U. S. 375 and quoted therefrom with approval the following passage:

"Commerce among the States is not a technical legal conception, but a practical one, drawn from the course of business. When cattle are sent for sale from a place in one State, with the expectation that they will end their transit, after purchase, in another, and when in effect they do so, with only the interruption necessary to find a purchaser at the stockyards, and when this is a typical, constantly recurring course, the current thus existing is a current of commerce among the States, and the purchase of the cattle [fol. 397] is a part and incident of such commerce."

In *Kreuger v. Acme Fruit Co.* 5 Cir. 75 F. 2d 67, the Circuit Court of Appeals of the Fifth Circuit upheld the provision of the Perishable Agricultural Commodities Act of 1930, 7 U. S. C. A. 551, which conferred upon the Secretary of Agriculture power to make reparation orders arising out of a sale made in interstate commerce. The court, speaking through the late Judge Bryan, said:

"It (the act) does, however, assume jurisdiction over a dealer while he is engaged in buying agricultural commodities in interstate commerce; and that it may do so under the commerce clause of the Federal Constitution we entertain no doubt (Const. art. 1, sec. 8, cl. 3) * * * The purchase of a commodity for shipment from one state to another is as much a part of interstate commerce as the transportation or sale at destination."

* See also *Foster-Fountain Packing Co. v. Haydel* 278 U. S. 1; *Flanagan v. Federal Coal Co.* 267 U. S. 222; and *Townsend v. Yeomans* 301 U. S. 441, the case last cited dealing with a Georgia statute regulating the fees of tobacco warehousemen, but inferentially treating as valid the act here under consideration.

And we do not think that the fact that a small part of the tobacco sold on an auction tobacco market, such as that at Oxford, N. C., is destined for local manufacture or even for local consumption affects the power of Congress to regulate the sales which take place there. Not only is such a market a throat through which all of the tobacco sold enters the stream of interstate commerce, either immediately or after local manufacture in the form of tobacco products

(cf. *Stafford v. Wallace*, *supra*), but it also appears that by far the greater part of it is purchased for immediate transportation in interstate commerce, and that the manner of sale is such that it would be impossible for Congress to regulate the sale of this part without regulating at the same [fol. 398] time the sale of that destined for local manufacture. No one can tell until a pile of tobacco is sold to the highest bidder whether it will be bought by a buyer for a local or for a foreign manufacturer; and if the sale is to be regulated with respect to the foreign buyer it must be regulated with respect to the local buyer also. It is well settled that the power of Congress to regulate a matter affecting interstate commerce is not to be denied because such control may involve also a regulation of some commerce which is intrastate. Dealing with this very question in *Stafford v. Wallace*, *supra*, the Supreme Court said:

"The application of the commerce clause of the Constitution in the *Swift Case* was the result of the natural development of interstate commerce under modern conditions. It was the inevitable recognition of the great central fact that such streams of commerce from one part of the country to another which are ever flowing are in their very essence the commerce among the States and with foreign nations which historically it was one of the chief purposes of the Constitution to bring under national protection and control. This court declined to defeat this purpose in respect of such a stream and take it out of complete national regulation by a nice and technical inquiry into the non-interstate character of some of its necessary incidents and facilities when considered alone and without reference to their association with the movement of which they were an essential but subordinate part."

In the *Minnesota Rate Cases* 230 U. S. 352, 399, the Court succinctly stated the applicable rule as follows:

"The authority of Congress extends to every part of interstate commerce, and to every instrumentality or agency by which it is carried on; and the full control by Congress of the subjects committed to its regulation is not to be denied or thwarted by the commingling of interstate and intrastate operations. This is not to say that the Nation may deal with the internal concerns of the State, as such, but that the execution by Congress of its constitutional power to regu-

[fol. 399] late interstate commerce is not limited by the fact that intrastate transactions may have become so interwoven therewith that the effective government of the former incidentally controls the latter. This conclusion necessarily results from the supremacy of the national power within its appointed sphere."

In the *Shreveport Case*, 234 U. S. 342, the Supreme Court upheld an order of the Interstate Commerce Commission affecting intrastate rates, holding that Congress had power to regulate even the intrastate charges of a carrier when necessary to its regulation of interstate commerce. The Court said:

"Congress is empowered to regulate,—that is, to provide the law for the government of interstate commerce; to enact 'all appropriate legislation' for its 'protection and advancement' (*The Daniel Ball*, 10 Wall. 557, 564); to adopt measures 'to promote its growth and insure its safety' (*County of Mobile v. Kimball*, *supra*); 'to foster, protect, control and restrain' (*Second Employers' Liability Cases*, *supra*). *Its authority, extending to these interstate carriers as instruments of interstate commerce, necessarily embraces the right to control their operations in all matters having such a close and substantial relation to interstate traffic that the control is essential or appropriate to the security of that traffic, to the efficiency of the interstate service, and to the maintenance of conditions under which interstate commerce may be conducted upon fair terms and without molestation or hindrance.* As it is competent for Congress to legislate to these ends, unquestionably it may seek their attainment by requiring that the agencies of interstate commerce shall not be used in such manner as to cripple, retard or destroy it. The fact that carriers are instruments of intrastate commerce, as well as of interstate commerce, does not derogate from the complete and paramount authority of Congress over the latter or preclude the Federal power from being exerted to prevent the intrastate operations of such carriers from being made a means of injury to that which has been confided to Federal care. *Wherever the interstate and intrastate transactions of carriers are so related that the government of the one involves the control of* [fol. 400] *the other, it is Congress, and not the State, that is entitled to prescribe the final and dominant rule, for other-*

wise Congress would be denied the exercise of its constitutional authority and the State, and not the Nation, would be supreme within the national field." (*Italics ours.*)

The rule was thus stated by the Chief Justice in the very recent case of *A. L. A. Schechter Poultry Corp. v. United States* 295 U. S. 495, 544:

"The power of Congress extends not only to the regulation of transactions which are part of interstate commerce, but to the protection of that commerce from injury. It matters not that the injury may be due to the conduct of those engaged in intrastate operations. Thus, Congress may protect the safety of those employed in interstate transportation 'no matter what may be the source of the dangers which threaten it.' *Southern Ry. Co. v. United States*, 222 U. S. 20, 27. We said in *Second Employers' Liability Cases*, 223 U. S. 1, 51, that it is the 'effect upon interstate commerce,' not 'the source of the injury,' which is 'the criterion of Congressional power'. We have held that, in dealing with common carriers engaged in both interstate and intrastate commerce, the dominant authority of Congress necessarily embraces the right to control their intrastate operations in all matters having such a close and substantial relation to interstate traffic that the control is essential or appropriate to secure the freedom of that traffic from interference or unjust discrimination and to promote the efficiency of the interstate service."

The question of the power of Congress to regulate phases of a business which are purely intrastate in character where necessary to the proper regulation and control of interstate business was recently before this Court in the case of *Virginian Ry. Co. v. System Federation No. 40*, 4 Cir. 84 F. 2d 641, wherein, after an extended review of the applicable authorities, we upheld the National Railway Labor Act as applied to the back shop employees of the Virginian Railway. In affirming our decision on this point, the Supreme [fol. 401] Court, speaking through Mr. Justice Stone, said (300 U. S. at 556): "The activities in which these employees are engaged have such a relation to the other confessedly interstate activities of the petitioner that they are to be regarded as a part of them. All taken together fall within the power of Congress over interstate commerce." The regulation of matters affecting intrastate as well as interstate

commerce under the National Labor Relations Act has recently been sustained on the same principle. *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 38; *National Labor Relations Board v. Friedmann-Harry Marks Clothing Co.* 301 U. S. 58, 72; *Jeffery-DeWitt Insulator Co. v. National Labor Relations Board*, 4 Cir. 91 F. 2d 134, 140.

On the third question, i. e. whether the act must be condemned as an unlawful delegation of power either to the Secretary of Agriculture or to the growers, it is to be observed that the provision of which complaint is made is that which forbids the sale on designated markets of tobacco which has not been inspected; and it is clear that, as to this, there is no delegation of power to anyone. What is delegated to the Secretary of Agriculture is the designation of the markets which are to have the free government inspection and grading service and as to which the provisions of the act protecting that service and providing for sales in accordance therewith are to apply; and we see no more objection to this than to delegation by Congress of authority to the Administrator of Public Works to designate the projects for loans and grants under the Public Works Program. See *Greenwood County v. Duke Power Co.*, 4 Cir. 81 F. 2d 986, 994; *Duke Power Co. v. Greenwood County*, 4 Cir. 91 F. 2d 665, 673. It was manifestly impossible for Congress itself to set up an inspection and grading service. This was an administrative matter for the executive department which would necessarily be limited in the performance of the duty by the number of trained inspectors available and by the money appropriated for the purpose. [fol. 402] Realizing this, and foreseeing that the installation of the service would necessarily be a rather slow process, Congress made a comparatively small appropriation for the service and delegated to the Commissioner the duty of installing it in those markets "where the greatest number of growers may be served with the facilities available". As the inspection would manifestly be of little value where it was not favored by the growers themselves, Congress imposed as a condition of its installation on any market that it be approved by a two-thirds vote of those voting in a referendum of the growers who had sold tobacco on that market during the preceding marketing season. We think that this was but the delegation to the Secretary of the working out of the details of a policy approved by Congress and that the

act itself sufficiently indicates the standards by which the discretion vested was to be exercised, i. e. so as to serve the greatest possible number of growers with the facilities and within the appropriation available, and to limit the service to the growers who really desired it. *Field v. Clark* 143 U. S. 649; *Union Bridge Co. v. United States* 204 U. S. 365; *United States v. Grimaud* 220 U. S. 506; *Hampton & Co. v. United States* 276 U. S. 394; *Federal Radio Commission v. Nelson* 289 U. S. 266; *A. L. A. Schechter Poultry Corp. v. United States* 295 U. S. 495, 530. As said in the case last cited:

"We pointed out in the *Panama Company* case that the Constitution has never been regarded as denying to Congress the necessary resources of flexibility and practicality, which will enable it to perform its function in laying down policies and establishing standards, while leaving to selected instrumentalities the making of subordinate rules within prescribed limits and the determination of facts to which the policy as declared by the legislature is to apply."

There was no delegation of anything to the growers by reason of the referendum provided for. That was imposed as a limitation upon the discretion of the Secretary. He [fol. 403] could not designate a market without the approval of two-thirds of the growers voting in such a referendum; but he was not bound to order the referendum in any market or to designate the market even after the requisite two-thirds vote of growers in a referendum ordered. The growers were absolutely without power, therefore, to invoke the provisions of the law; and such cases as *Carter v. Carter Coal Co.* 298 U. S. 238, and *Eubank v. City of Richmond*, 226 U. S. 137, have no application. The situation presented is more like that under consideration in *Doty v. Love* 295 U. S. 64, wherein a state statute, authorizing the superintendent of banks to reopen the bank on certain contingencies, made the exercise of his discretion dependent upon a favorable vote of three-fourths of the depositors. In that case, the Court, speaking through Mr. Justice Cardozo, said:

"The argument will not hold that the necessary operation of the statute is to subject dissenting creditors, who may be as many as one-fourth, to the will or the whim of the assenting three-fourths. The creditors favoring reorganization, though they be ninety-nine per cent, have no power

under the statute to impose their will on a minority. They may advise and recommend, but they are powerless to coerce. Their recommendation will be ineffective unless approved by the Superintendent. Even if approved by him, it will be ineffective unless the court after a hearing shall find it to be wise and just. Upon such a hearing every objection to the plan in point of law or policy may be submitted and considered. The decree when made by the Chancellor will represent his own unfettered judgment. The judicial power has not been delegated to non-judicial agencies or to persons or factions interested in the event."

The vote provided for is no more a delegation of governmental power than is the vote of creditors required as a condition of approval of a plan of reorganization under Sec. 77-B of the Bankruptcy Act; and it is required on the same principle, i. e. to insure that a vested discretion will not be [fol. 404] exercised contrary to the desire of the persons most interested. In the case of *Cusack Co. v. City of Chicago* 242 U. S. 526, the Court had under consideration an ordinance which forbade the erection of signboards in any block on any public street, but permitted such erection upon the consent in writing of owners of a majority of the frontage of the property in the block. In sustaining the ordinance the Court distinguished *Eubank v. Richmond*, supra, on a principle which is seen to be applicable here, when it is remembered that the vote of the growers here may prevent the establishment of a market by the Secretary but may not require it. The Court said in that case:

"A sufficient distinction between the ordinance there considered and the one at bar is plain. The former left the establishment of the building line untouched until the lot owners should act and then made the street committee the mere automatic register of that action and gave to it the effect of law. The ordinance in the case at bar absolutely prohibits the erection of any billboards in the blocks designated, but permits this prohibition to be modified with the consent of the persons who are to be most affected by such modification. The one ordinance permits two-thirds of the lot owners to impose restrictions upon the other property in the block, while the other permits one-half of the lot owners to remove a restriction from the other property owners. This is not a delegation of legislative power, but

is, as we have seen, "a familiar provision affecting the enforcement of laws and ordinances."

We see no merit in the questions raised under the Fifth Amendment. It is clear, of course, that the requiring of grading and inspection was a proper regulation of auction sales of tobacco. Cf. *United States v. Shreveport Grain & Elevator Co.* 281 U. S. 77; *Townsend v. Yeomans* 301 U. S. 441. And we see no ground of objection under the due process clause in the fact that inspection is provided under the designation of the Secretary in some markets before it is provided in others, and that the provisions of the act [fol. 405] thereupon become applicable to such markets. There is no requirement that regulation of interstate commerce be uniform throughout the United States. *Clark Distilling Co. v. Western Maryland R. Co.* 242 U. S. 311, 327; *Cooley v. Board of Wardens of Philadelphia* 12 How. 299, 318. When a market is designated for the inspection service provided by the Act, all persons who buy or sell at auction in that market are subject to its provisions; and the fact that persons who buy or sell on other markets are not subject thereto does not render the classification unreasonable or amount to a denial of due process or even of equal protection, if that were required. *Fort Smith Light & Traction Co. v. Board of Improvement* 279 U. S. 387, 391; *Mason v. Missouri* 179 U. S. 328; *Missouri v. Lewis* 101 U. S. 22, 31. It is sufficient that "all persons subject to it are treated alike under similar circumstances and conditions in respect both of the privileges conferred and the liabilities imposed." *Missouri R. Co. v. Mackey* 127 U. S. 205, 209.

It is true that arbitrary discrimination between persons in similar circumstances would violate the due process clause; but it does not appear that there was arbitrary discrimination for or against anyone in the designation of the Oxford market for inspection service under the Act. On the contrary, it appears that one reason for the designation of that market was that free government inspection and grading of a voluntary character had already been established there and the growers patronizing it had thus already been made familiar with the government service. The Secretary is vested with a discretion as to grouping markets for referendum under the Act, and nothing in the record indicates any abuse of this discretion on his part. The provisions of the Act for the protection of the service are general

in character, and become applicable when the market is designated and the service afforded; and we see no reason why putting a service of this sort into effect gradually, in [fol. 406] stead of all at once, should render the statute providing for it unconstitutional. The Grain Standards Act of 1916, 7 U. S. C. A. 76, expressly provides for the shipment of grain without inspection from places for which no inspection is provided, although such shipment is penalized if made from places having inspection service; and it has never been suggested that the Act is rendered unconstitutional by reason of containing such a provision.

For the reasons stated the decree appealed from will be reversed and the cause will be remanded with direction to dismiss the bill.

Reversed.

[fol. 407] DECREE—Filed and Entered April 5, 1938

UNITED STATES CIRCUIT COURT OF APPEALS, FOURTH CIRCUIT

No. 4224

HENRY A. WALLACE, Secretary of Agriculture for the United States, and J. O. Carr, United States District Attorney for the Eastern District of North Carolina, and W. R. Wilson, Agent and Representative of the Secretary of Agriculture for the United States and in Charge of the Grading of Tobacco Upon the Oxford Tobacco Market, Appellants,

VS.

D. T. CURRIN, S. M. CUTTS, and H. A. AVERETT, Doing Business as Fleming Warehouse, Oxford, North Carolina; H. L. Thomasson, T. B. Williams and J. C. Adcock, Doing Business as Mangum Warehouse, Oxford, North Carolina; C. R. Watkins and J. R. Watkins, Doing Business as The Johnson Warehouse, Oxford, North Carolina, and D. F. Currin, Doing Business as Farmers Warehouse, Oxford, North Carolina, Appellees

Appeal from the District Court of the United States for the Eastern District of North Carolina

This Cause came on to be heard on the transcript of the record from the District Court of the United States for the

[fol. 408] Eastern District of North Carolina, and was argued by counsel.

On Consideration Whereof, It is now here ordered, adjudged, and decreed by this Court that the decree of the said District Court appealed from, in this cause, be, and the same is hereby, reversed; and that this cause be, and the same is hereby, remanded to the District Court of the United States for the Eastern District of North Carolina, at Raleigh, with directions to dismiss the bill in accordance with the opinion of the Court filed herein.

April 5th, 1938.

John J. Parker, Senior Circuit Judge.

On another day, to-wit, May 6, 1938, the mandate of this Court in this cause is issued and transmitted to the District Court of the United States for the Eastern District of North Carolina, at Raleigh, in due form.

Same day, the original petition for appeal, and order allowing appeal are returned to the Clerk of the District Court at Raleigh, North Carolina.

[fol. 409]

CLERK'S CERTIFICATE

UNITED STATES OF AMERICA,
Fourth Circuit, ss:

I, Claude M. Dean, Clerk of the United States Circuit Court of Appeals for the Fourth Circuit, do certify that the foregoing is a true copy of the entire record and proceedings in the therein entitled cause, as the same remain upon the records and files of the said Circuit Court of Appeals.

In Testimony Whereof, I hereto set my hand and affix the seal of the said United States Circuit Court of Appeals for the Fourth Circuit, at Richmond, Virginia, this 16th day of July, A. D., 1938.

Claude M. Dean, Clerk, U. S. Circuit Court of Appeals, Fourth Circuit. (Seal United States Circuit Court of Appeals, Fourth Circuit.)

[fol. 410] IN THE SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1938

HENRY A. WALLACE, Secretary of Agriculture for the United States, and J. O. Carr, United States District Attorney for the Eastern District of North Carolina, and W. R. Wilson, Agent and Representative of the Secretary of Agriculture for the United States and in Charge of the Grading of Tobacco Upon the Oxford Tobacco Market, Appellants,

vs.

D. T. CURRIN, S. M. CUTTS, and H. A. AVERETT, Doing Business as Fleming Warehouse, Oxford, North Carolina; H. L. Thomasson, T. B. Williams and J. C. Adcock, Doing Business as Mangum Warehouse, Oxford, North Carolina; C. R. Watkins and J. R. Watkins, Doing Business as the Johnson Warehouse, Oxford, North Carolina, and D. F. Currin, Doing Business as Farmers Warehouse, Oxford, North Carolina, Appellees

ORDER EXTENDING TIME WITHIN WHICH TO APPLY FOR WRIT
OF CERTIORARI

In consideration of the application of Counsel for the Petitioners, D. T. Currin, S. M. Cutts, and H. A. Averett, doing business as Fleming Warehouse, Oxford, North Carolina, H. L. Thomasson, T. B. Williams and J. C. Adcock, doing business as Mangum Warehouse, Oxford, North Carolina, C. R. Watkins and J. R. Watkins, doing business as the Johnson Warehouse, Oxford, North Carolina, and D. F. Currin, doing business as Farmers Warehouse, Oxford, North Carolina, in the above-entitled cause, and good cause therefor having been shown, it is now here ordered that the time within which a petition for a writ of certiorari may be filed herein be, and the same is, hereby extended to and including September 1, 1938.

J. C. McReynolds, Justice

June 30, 1938.

[vol. 411] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 10, 1938

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fourth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(8639)

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AUG 15 1938

SUPREME COURT OF THE UNITED STATES

**CHARLES ELMORE CROPLEY
CLERK**

OCTOBER TERM, 1938

No. 275

**D. T. CURRIN, S. M. CUTTS, AND H. A. AVERETT, DOING
BUSINESS AS FLEMING WAREHOUSE, OXFORD, NORTH CARO-
LINA, ET AL.,** *Petitioners,*

vs.

**HENRY A. WALLACE, SECRETARY OF AGRICULTURE FOR
THE UNITED STATES, ET AL.**

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FOURTH CIRCUIT.**

**B. S. ROYSTER, JR.,
J. C. LANIER,
J. W. H. ROBERTS,**
Counsel for Petitioners,

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938.

No. 275

D. T. CURRIN, S. M. CUTTS, AND H. A. AVERETT, DOING
BUSINESS AS FLEMING WAREHOUSE, OXFORD, NORTH CARO-
LINA; H. L. THOMASSON, T. B. WILLIAMS AND J. C.
ADCOCK, DOING BUSINESS AS MANGUM WAREHOUSE, OX-
FORD, NORTH CAROLINA; C. R. WATKINS AND J. R. WAT-
KINS, DOING BUSINESS AS THE JOHNSON WAREHOUSE, OX-
FORD, NORTH CAROLINA, AND D. F. CURRIN, DOING BUSI-
NESS AS FARMERS WAREHOUSE, OXFORD, NORTH CAROLINA,

Petitioners,

vs.

HENRY A. WALLACE, SECRETARY OF AGRICULTURE FOR
THE UNITED STATES, AND J. O. CARR, UNITED STATES DIS-
TRICT ATTORNEY FOR THE EASTERN DISTRICT OF NORTH CARO-
LINA, AND W. R. WILSON, AGENT AND REPRESENTATIVE OF
THE SECRETARY OF AGRICULTURE FOR THE UNITED STATES
AND IN CHARGE OF THE GRADING OF TOBACCO UPON THE OX-
FORD TOBACCO MARKET.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FOURTH CIRCUIT.**

To the Honorable the Supreme Court of the United States:

Your petitioners, D. T. Currin, S. M. Cutts, and H. A. Averett, doing business as Fleming Warehouse, Oxford,

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 275

D. T. CURRIN, S. M. CUTTS AND H. A. AVERETT, DOING BUSINESS AS FLEMING WAREHOUSE, OXFORD, NORTH CAROLINA; H. L. THOMASSON, T. B. WILLIAMS AND J. C. ADCOCK, DOING BUSINESS AS THE MANGUM WAREHOUSE, OXFORD, NORTH CAROLINA; C. R. WATKINS AND J. R. WATKINS, DOING BUSINESS AS THE JOHNSON WAREHOUSE, OXFORD, NORTH CAROLINA, AND D. F. CURRIN, DOING BUSINESS AS FARMERS WAREHOUSE, OXFORD, NORTH CAROLINA,

Petitioners,

vs.

HENRY A. WALLACE, SECRETARY OF AGRICULTURE FOR THE UNITED STATES, AND J. O. CARR, UNITED STATES DISTRICT ATTORNEY FOR THE EASTERN DISTRICT OF NORTH CAROLINA, AND W. R. WILSON, AGENT AND REPRESENTATIVE OF THE SECRETARY OF AGRICULTURE FOR THE UNITED STATES AND IN CHARGE OF THE GRADING OF TOBACCO UPON THE OXFORD TOBACCO MARKET.

PETITIONERS' BRIEF.

Opinions Below.

The opinion of the District Court of the United States for the Eastern District of North Carolina, which is not

North Carolina; H. A. Thomasson, T. B. Williams and J. C. Adcock, doing business as Mangum Warehouse, Oxford, North Carolina; C. R. Watkins and J. R. Watkins, doing business as the Johnson Warehouse, Oxford, North Carolina; and D. R. Currin, doing business as Farmers Warehouse, Oxford, North Carolina, pray that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Fourth Circuit entered in the above case on April 5, 1938, reversing the judgment of the District Court of the United States for the Eastern District of North Carolina.

Opinions Below.

The opinion of the District Court, which is not reported, appears in the record at pp. 34-43. The opinion of the Circuit Court of Appeals appears in the record at pp. 383-401, and is reported in 95 Fed. (2d), page 856.

Jurisdiction.

The judgment of the Circuit Court of Appeals was entered April 5, 1938. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

Questions Presented.

A. Whether the Act of Congress, approved August 23, 1935, known as the Tobacco Inspection Act (Public, No. 314, 74th Congress, H. R. 8026), is a constitutional and valid exercise of the power of Congress to regulate interstate commerce, or an unconstitutional and invalid attempt to regulate a purely intrastate activity?

B. Whether or not the aforesaid Act of Congress is unconstitutional in substance and materially discriminating in its application?

C. Whether or not said Act of Congress contemplates and provides for an unlawful and unconstitutional delegation by Congress of its legislative powers?

D. Whether or not said Act of Congress violates the Fifth Amendment to the Constitution of the United States?

Statute Involved.

The statute involved is set out in the record at page 18.

Statement.

Your petitioners instituted this suit on October 24, 1936, in the District Court of the United States for the Eastern District of North Carolina for the purpose of having the Tobacco Inspection Act declared invalid.

On October 24, 1936, Judge I. M. Meekins of the District Court of the United States for the Eastern District of North Carolina issued an order to show cause why a restraining order should not issue until the final determination of this action.

The hearing upon the order to show cause was held before Meekins, Judge, on November 5, 1936, at which hearing both the complainants and defendants were represented. At the conclusion of this hearing the court announced from the bench "The Act is unconstitutional; discriminating in its provisions and confiscatory in its application." The restraining order sought by the complainants was thereafter granted. The defendants did not appeal, but elected to answer and have the cause heard upon its merits. At a special term of the United States District Court for the Eastern District of North Carolina, held at Elizabeth City, North Carolina, beginning February 15, 1937, this cause was heard upon its merits, the complainants and defendants both appearing and being represented by counsel. On April 19, 1937, Meekins, Judge, rendered judgment, adjudging and

declaring the Tobacco Inspection Act unconstitutional and invalid.

The defendants appealed to the United States Circuit Court of Appeals.

The cause was heard in the Circuit Court of Appeals for the Fourth Circuit in the January Term, 1938.

On April 5, 1938, the Circuit Court rendered judgment, reversing the judgment of the District Court, and remanding the cause to the District Court with directions to dismiss the bill in accordance with the opinion of the Circuit Court.

Specification of Errors to be Urged.

Your petitioners are advised and believe that the Circuit Court of Appeals erred:

1. In holding that the Act is a valid exercise of the regulatory power of Congress under the commerce clause of the Constitution.

2. In holding that the Act is not unconstitutional in substance and materially discriminating in its application.

3. In holding that the powers granted to the Secretary of Agriculture do not constitute an unconstitutional delegation of legislative power.

4. In holding that the Act does not violate the Fifth Amendment of the Constitution.

Reasons for Granting the Writ.

- (1) Briefly stated, the instant case involves the constitutionality of an Act of Congress (R. 18-21) known as the Tobacco Inspection Act. The Act provides that the Secretary of Agriculture is authorized to designate those auction markets where tobacco bought and sold thereon at auction, or the products customarily manufactured therefrom, moves in commerce. It further provides that before any market

is so designated by the Secretary, a referendum shall be held among the tobacco growers who sold tobacco at auction on such market during the preceding season and that no market or group of markets shall be so designated by the Secretary unless two-thirds of the growers voting favor it.

After an auction market has been so designated by the Secretary, no tobacco can be offered for sale at auction on such market unless and until it has been inspected and certified by a grader or inspector selected by or through the Secretary of Agriculture of the United States. Stated simply, the Act compels all tobacco growers patronizing those markets designated by the Secretary of Agriculture to submit their tobacco to one of said graders or inspectors for inspection and certification before such tobacco can be offered for sale at auction. If sold otherwise than at auction, inspection is not required. The Act further provides a penalty consisting of a fine or imprisonment, or both, for a violation of the provisions of the Act requiring inspection and certification.

The Act does not provide for the inspection of all tobacco moving into interstate commerce. Tobacco sold otherwise than through the auction system or on markets not designated by the Secretary of Agriculture may move freely in interstate commerce without regulation or inspection.

Your petitioners contend that under the decisions of this Court, agriculture and farming is a purely local activity, intrastate in character and not subject to regulation by the Congress. Petitioners further contend that the offering for sale of a farm product by a grower at auction on a warehouse floor does not constitute interstate commerce, and that, prior to its sale or delivery for shipment, Congress has no power to regulate the handling of a farm product; and that the Tobacco Inspection Act, which compels the delivery of a farm product to a government grader for in-

spection, prior to the offering of such farm product for sale or delivery for shipment, and while still in the hands, and under the control, of the grower is clearly beyond the constitutional power vested in Congress, and is an invasion of the powers reserved to the States.

U. S. v. Butler, 56 S. Ct., p. 15;

Coe v. Errol, 116 U. S., p. 517;

Crescent Oil Company v. Mississippi, 257 U. S., p. 129;

Federal Compress and Warehouse Co. v. McLean, 291 U. S., p. 17;

Heisler v. Thomas Colliery Company, 260 U. S., p. 246.

Your petitioners further contend that the powers granted to the Secretary of Agriculture to designate markets where tobacco bought and sold thereon at auction moves in commerce, is an unconstitutional delegation of legislative power.

The Schechter Case, 295 U. S., p. 495;

Panama Refining Company v. Ryan, 55 S. Ct., p. 241.

Your petitioners further contend that the Act violates the Fifth Amendment of the Constitution in that it delegates to a majority the power to pass compulsory legislation affecting the minority, and in that it is discriminatory in its provisions and confiscatory in its application.

Carter v. Carter, 56 S. Ct., p. 589.

Conclusion.

The decision below is the first decision under this statute, and is contrary to former decisions of the Court defining the interstate status of agricultural products. The question involved is vital from the standpoint of tobacco warehousemen who have a large investment in the auction system of handling and selling tobacco, and who handle annually a volume of business worth approximately three hundred mil-

lion dollars. The Act in question circumscribes the auction system of selling tobacco, while other methods and systems of selling tobacco are unregulated and free from the compulsory inspection required of auction sales under the Act.

Your petitioners verily believe that this Act is calculated to hinder and destroy their business, in that it places upon the business of your petitioners restrictions and limitations which are not placed upon the business of their competitors, operating the same kind of business, in the same State, and sometimes in the same County. It denies to your petitioners the same rights and privileges enjoyed by their competitors on other auction markets, and by competitors who do not use the auction system.

WHEREFORE your petitioners pray that a writ of certiorari may issue under the seal of this Honorable Court, directed to the Circuit Court of Appeals for the Fourth Circuit, commanding the said court to certify and send to this Court on a day certain to be therein designated, a certified transcript of the record, that the said case may be reviewed and determined, or that your petitioners may have such other relief as the Court may deem appropriate, and that the said judgment may be reversed.

Respectfully submitted,

B. S. ROYSTER, JR.,
J. C. LANTIER,
J. W. H. ROBERTS,
Of Counsel for Petitioners.

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SUPREME COURT OF THE UNITED

OCTOBER TERM, 1938

No. 275

D. T. CURRIN, S. M. CUTTS AND H. A. AVERETT, Do-
ING BUSINESS AS FLEMING WAREHOUSE, OXFORD, NORTH
CAROLINA, ET AL., *Petitioners,*

vs.

HENRY A. WALLACE, SECRETARY OF AGRICULTURE FOR
THE UNITED STATES, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FOURTH CIRCUIT.

PETITIONERS' BRIEF.

B. S. ROYSTER, JR.,
J. C. LANIER,
J. W. H. ROBERTS,
Counsel for Petitioners.

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reported, appears in the record at pp. 95-110. In this opinion the court held the Tobacco Inspection Act to be invalid and unconstitutional. The opinion of the United States Circuit Court of Appeals, Fourth Circuit, appears in the record at pp. 384-401, and is reported in 95 F. (2d), page 856. The Circuit Court of Appeals reversed the judgment of the District Court and declared the Act to be valid and constitutional.

Jurisdiction.

The judgment of the Circuit Court of Appeals was entered April 5, 1938. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

Statute Involved.

The statute involved is the "Tobacco Inspection Act" approved August 23, 1935, and is set out in the record at page 19.

Questions Presented.

- A. Whether, under the facts in this case, the complainants are entitled to maintain this suit?
- B. Whether the Tobacco Inspection Act is constitutional?

Statement.

This action was instituted for the purpose of having an Act of Congress, approved August 23, 1935, known as the Tobacco Inspection Act, declared invalid, and to secure a permanent injunction against the enforcement of its provisions. The complainants operate in the town of Oxford, North Carolina, four (4) auction tobacco warehouses, which are used in connection with the sale of leaf tobacco at auction. In the conduct of their business the complainants furnish the building, the clerical help, labor, equipment and

uction services to tobacco growers who bring their tobacco to the warehouses to be displayed and offered for sale to the highest bidder at auction. For their services the warehousemen received a stated commission, controlled by statute, which is paid by the seller. The purchasers at the auction sales are the various tobacco companies who handle, redry, re-sell and sometimes manufacture tobacco into finished products.

The complainants have large sums of money invested in their warehouses and their equipment, and earn their living thru the operation of such warehouses.

There are seven (7) tobacco warehouses in the town of Oxford, North Carolina, all performing the same services for the growers in connection with auction sales. There are approximately forty (40) tobacco markets in towns in North Carolina where tobacco is sold at auction in warehouses similar in every respect to the warehouses of the complainants.

Pursuant to the power purported to be contained in the Tobacco Inspection Act, the Secretary of Agriculture in 1936 conducted a referendum among the alleged patrons of the Oxford tobacco market. Approximately ten thousand (10,000) ballots were distributed; eighteen hundred ninety-six (1896) were returned; seventeen hundred eighty-two (1782) of these ballots were favorable and one hundred fourteen (114) were unfavorable. The Secretary of Agriculture thereupon designated the Oxford tobacco market as a market where tobacco bought and sold thereon at auction, or the products customarily manufactured therefrom moves in commerce, and placed on all the warehouse floors in Oxford government inspectors to grade and inspect all tobacco placed upon said warehouse floors, prior to its being offered for sale at auction on such floors. None of the warehousemen were afforded an opportunity to participate in the

referendum, although the law directly controls the warehousemen in the operation of their warehouse business.

The law does not purport to require grading and inspection of tobacco offered for sale except when such tobacco is to be sold at auction on warehouse floors.

During the selling season of 1936-37 there was compulsory grading and inspection of tobacco on only three (3) markets in North Carolina, namely Farmville, Goldsboro and Oxford; there are forty (40) auction markets in North Carolina, each in competition with the other, operating in substantially the same manner, and handling the same product in the same way.

A referendum was held among the growers alleged to be patrons of the Smithfield, N. C., market but was voted down and Smithfield was not designated as a market on which tobacco bought and sold at auction moves in commerce, though tobacco is sold in the same manner and for the same purpose in Smithfield and Oxford.

The record discloses that there is an admission on the part of the defendants that an actual controversy exists between the complainants and the defendants (paragraph three of the answer). The record further discloses that a number of growers who patronized the warehouses of the complainants objected to compulsory grading and inspection as provided by the Act, and because of said inspection and grading did not sell all their tobacco with the complainants during the season 1936-37.

The record further shows that tobacco sold on the warehouse floors of complainants, ungraded and uninspected, averaged \$2.69 per hundred more than tobacco sold during the same period on warehouse floors in Oxford where such tobacco was inspected and graded. This is the record after injunctive relief was granted. If this increase in price was caused by the fact that such tobacco sold by the complainants was not graded or inspected, patrons of complainants

would have received \$136,098.00 less for 5,059,430 pounds sold by complainants during this period. Therefore, the commissions of these complainants would have been \$3,402.00 less, had not a restraining order been issued which prevented grading and inspection on their floors during this period.

The record further discloses that the producer does not part with title to his tobacco until such tobacco has been sold at auction and the sale approved by the grower, and that under the said Act the inspection and grading required under the Act is done prior to the sale and prior to the offering for sale of the tobacco on the warehouse floor.

Stripped of its legal phraseology, declarations of policy, definition of commerce and directive paragraphs, the Act in essence provides: that no person may offer for sale tobacco *at auction* on a market designated by the Secretary of Agriculture pursuant to Section V of the Act, unless and until such tobacco has been submitted to a government inspector for inspecting and grading. It further provides (Section 12) that any person violating any provision of Sections 5 and 10 of the Act shall be guilty of a misdemeanor, and upon conviction thereof shall be fined or imprisoned. The Act therefore is a penal statute.

It does not provide for a general inspection and certification of tobacco moving in interstate commerce. In certain instances it applies to all tobacco offered at auction on a particular market, regardless of whether the tobacco is destined to enter the channel of interstate commerce. In other cases, tobacco of the same character and kind may be sold and shipped in interstate commerce without the inspection or certification provided under the Act. The Act applies only to tobacco sold on particular markets and in a particular manner, to wit at auction. Under the provisions of the Act it is entirely possible for a tobacco grower to sell

and ship in interstate commerce his entire crop, without inspection or certification.

There is no requirement under the Act that tobacco *as such* must be inspected and certified, prior to its shipment in interstate commerce. The provisions of the Act apply *only* when tobacco is sold *at auction on designated* markets. Under the Act it is now unlawful to offer for sale tobacco at auction on the markets of Farmville, Goldsboro and Oxford unless such tobacco has been inspected and certified, but *the same tobacco* can be offered for sale *legally* on any one of the other thirty-seven (37) auction markets in North Carolina without inspection and certification. It can be offered for sale, sold and shipped in interstate commerce from Farmville, Goldsboro and Oxford without inspection, provided that it is sold otherwise than at auction.

A producer may sell his tobacco where he chooses, regardless of the fact that he was allowed to vote in the Oxford referendum, under the qualification that he had sold tobacco on the Oxford market. Therefore, under the Act, a grower who voted in the referendum requiring grading on the Oxford market for auction sales may legally and lawfully offer for sale and sell his tobacco ungraded and uninspected on other tobacco markets a short distance from Oxford. He may also sell his tobacco in Oxford ungraded, and may ship it from Oxford uncertified and uninspected, provided only he does not sell it at auction.

Under the provisions of the Act a producer may sell his tobacco in Oxford on the street, or at the receiving plant of a buyer, or he may ship it in interstate commerce to another state, without inspection and certification, but it is a violation of the criminal law under the Act for such grower to offer the same tobacco for sale at auction without having it inspected as required under the Act. Also, he may sell it at auction in an identical manner on various markets adjacent to Oxford and with various warehouse-

men in competition with these complainants, without the necessity of having it graded and inspected by government graders.

The District Court held the Tobacco Inspection Act to be invalid, and granted a permanent restraining order. Upon appeal to the Circuit Court of Appeals, the judgment of the District Court was reversed. The appeal reached this Court under a writ of certiorari.

Specification of Errors to be Urged.

That the Circuit Court of Appeals erred:

1. In holding that the Act is a valid exercise of the regulatory power of Congress under the commerce clause of the Constitution.

2. In holding that the Act is not unconstitutional in substance and materially discriminating in its application.

3. In holding that the powers granted to the Secretary of Agriculture do not constitute an unconstitutional delegation of legislative power.

4. In holding that the Act does not violate the Fifth Amendment of the Constitution.

ARGUMENT.

Complainants Are Entitled to Maintain This Suit.

Complainants contend that they are entitled to maintain this action to test the constitutionality of this Act.

Ashwander v. Tennessee Valley, 297 U. S. 288;

Carter v. Carter, 56 S. Ct. 859.

The Federal Declaratory Judgment Act (28 U. S. C. A. 400), approved June 14, 1934, provides:

"In cases of actual controversy the courts of the United States shall have power, upon petition, declara-

tion, complaint or other appropriate pleadings, to declare rights and other legal relations of any interested party petitioning for such declaration, whether or not further relief is or could be prayed, and such declaration shall have the full force and effect of a final judgment or decree, and be reviewable as such."

Complainants contend, and have set out in their pleadings, that there is a "case" or "controversy" between the complainants and the defendants within the meaning of those terms in the Constitution (Article 111, Section 2); that it is an "actual controversy" within the meaning of the terms of the Federal Declaratory Judgment Act. Respondents admit that an actual controversy exists. We contend that we have a right to question the constitutionality of the Act, and if the Act is unconstitutional, we have a right to operate our business without complying with the Act. Such a course would be ruinous to us in the event the Act is held to be valid. The penalties imposed for violations are severe and cumulative, and our rights would be irreparably damaged.

Ex parte Young, 209 U. S. 146;

Stafford v. Wallace, 258 U. S. 495-512;

Terrace v. Thompson, 263 U. S. 197-215;

Tyson & Bros. v. Banton, 273 U. S. 418-428.

If the Act is unconstitutional, we contend that we ought not be required to comply with it; and that, pending the Court's decision, we ought not be required to jeopardize our property and liberty by violating its provisions.

Also, we contend that there is an actual controversy between the parties as contemplated in the Declaratory Judgment Act.

Ætna Life Insurance Company v. Haworth, 300 U. S. 227.

The evidence discloses that complainants have large sums of money invested in auction warehouse property; that a number of their patrons are opposed to compulsory grading and inspection, and did not patronize these complainants because they disliked this service; that compulsory grading and inspection added considerable costs to these complainants in the operation of their business; that tobacco sold on the warehouse floors in Oxford where compulsory grading was enforced brought \$2.69 per hundred less than tobacco sold during the same period on the same market in warehouses where no such inspection was enforced; that this difference in price would have cost complainants in commissions more than \$3,000.00, had compulsory grading been enforced on their floors, with prices comparable to prices on other warehouse floors where grading was enforced.

The record further discloses that ungraded tobacco sold on the Oxford market in 1935-36 brought higher average price than tobacco sold on the Henderson and Durham markets during the same period, but that in 1936-37, when a large portion of the tobacco sold in Oxford was graded under the Act, the average price on the Durham and Henderson markets exceeded the average on the Oxford market. The Henderson and Durham markets are competitive markets to the Oxford market, located in the same tobacco belt, within a few miles of the Oxford market, and selling the same type of tobacco, from the same area, and in the same manner.

It is apparent therefore that at the time of the institution of this action the complainants were sustaining losses and injuries for which there was no adequate or complete remedy at law. The Act imposed penalties so severe and cumulative as to deter complainants from violating its provisions. On the other hand, compliance with its terms subjected the complainants to irreparable damage. In such

cases a court of equity has jurisdiction to enjoin the prosecution of criminal proceedings.

The general rule is that a court of equity has no such jurisdiction, but there is a well-recognized exception to this general rule.

In *Pennsylvania v. West Virginia*, 262 U. S. 563, the Court says:

"One does not have to await the consummation of threatened injury to obtain preventative relief. If the injury is certainly impending, that is enough."

In *Pierce v. Society of Sisters*, 268 U. S. 510, the Court says:

"The injury to appellees was present and very real, not a mere possibility in the remote future. If no relief had been possible prior to the effective date of the act, the injury would have become irreparable. Prevention of impending injury by unlawful action is a well recognized function of the courts of equity."

In this case the complainants were placed in the dilemma of either violating the statute and thereby running the risk of suffering severe cumulative penalties, or of complying with the statute and thus suffering irreparable property damage without being afforded an opportunity to determine the constitutionality of the Act.

We allege that the Act is unconstitutional; but if we violate it we are liable to a penalty of \$1,000.00 fine and 12 months in jail for each violation. If we are unwilling to incur this jeopardy, our profits will disappear, our goodwill as tobacco warehousemen will vanish, and our customers who dislike government grading will market their crop on other markets where grading is not compulsory. For these losses there is no adequate or complete remedy at law.

Therefore, under the facts and allegations, complainants contend that they are entitled to injunctive relief.

In *Royal Farms Dairy v. Wallace*, 7 Fed. Sup. 565, the Court says:

"We are not dealing here with a case where the law on its face is clearly applicable to one who complains that the act is unconstitutional, and where the complainant is subjected to heavy penalties if he unsuccessfully risks the assumption of its unconstitutionality. In such cases the jurisdiction of equity to enjoin defendants in the enforcement of an invalid law at the request of the complainant is well established."

The Court further says in the same opinion:

"Nor are we dealing with a case where the injunction is asked against an officer who clearly has power to enforce the law if valid."

In the instant case the District Attorney clearly has the power to enforce this law, if valid. To subject complainants to a multiplicity of criminal actions, pending final determination of the validity of the Act, would work a cruel hardship upon them, and in effect deprive them of their rights guaranteed under the Constitution.

Westmoreland Coal Co. v. Rothensies et al., 13 Fed. Sup. 321;

Iowa Southern Utilities Co. v. Town of Lamoni, 11 Fed. Sup. 181.

Complainants respectfully contend that they have a right to maintain this suit in a court of equity, and that they are entitled to a permanent restraining order, under all the facts.

But beyond the question of injunctive relief is the vital question of the constitutionality of the Tobacco Inspection Act. Complainants contend that the Act is unconstitutional and invalid, for that:

1st. The Act is not a valid exercise of the regulatory power of Congress under the commerce clause of the Constitution.

2nd. The Act is unconstitutional in substance and materially discriminating in its application.

3rd. That the Act contains an unconstitutional delegation of legislative power to the Secretary of Agriculture.

4th. That the Act violates the 5th amendment of the Constitution.

The Transaction of Offering for Sale Tobacco at Auction on Warehouse Floors is not a Transaction in Interstate Commerce.

Complainants contend that the business of offering for sale tobacco at auction upon their warehouse floors, as agents for the growers, who haul tobacco from their farms to the warehouse, is not a transaction in interstate commerce, nor does it affect interstate commerce, nor does it burden interstate commerce, within the meaning of the commerce clause of the Constitution.

We think this conclusion is inescapable, in the light of recent decisions of the Supreme Court.

Tobacco is not inherently an interstate commodity. There is a wealth of authority that cotton is not inherently an interstate commodity. The grower's cotton at the gin or in a storage house or in a local bonded warehouse has been held to be intra-state in character. Only when it begins to move in interstate commerce, does it take on an interstate character. The movement of cotton from the fields to the gin, from the gin to storage and from storage to market has always been held to be intra-state in character. And so with tobacco.

The title and control of the grower's tobacco does not pass from the grower unless and until he accepts the price

offered at the auction sale. The auction transaction is not a sale and passes no title. Only when the grower accepts the offered price is the sale consummated and title passed. After the tobacco has gone thru the auction sale the farmer may, and often does, reject the offered price and remove his tobacco from the warehouse floor and take it back home to await a more favorable price.

We contend that tobacco becomes interstate in character only when the sale is consummated and possession passes from the grower to purchaser. We contend that tobacco, moving from the fields to the curing barns, and from the curing barns to the warehouse floors, is no part of interstate commerce until sale and delivery have been made to a purchaser. *It should be noted that the inspection is required prior to the offering for sale of tobacco by a grower.* We contend that the right of control of commodities such as tobacco, cotton and coal, up to the point of sale, is not delegated to the Federal Government, but expressly reserved to the States by the 10th Amendment.

In the case of *United Mine Workers of America v. Colorado Company*, 259 U. S. 344; *Heisler v. Thomas Colliery Co.*, 260 U. S. 246; and *Oliver Mining Co. v. Lord*, 262 U. S. 172, it was held that the mining of coal is not interstate commerce, regardless of the fact that the coal may be entirely or largely transported in interstate commerce soon after the mining operations are completed.

In *Champlin Refining Co. v. Corporation Commission*, 286 U. S. 210, and *Hope Gas Co. v. Hall*, 274 U. S. 284, it is held that the production of oil is not interstate commerce, though the oil is intended to be, and actually is thereafter transported to other states. In *Hammer v. Dagenhart*, 247 U. S. 251; *United Leathers Workers v. Herkert*, 265 U. S. 457; *United States v. E. C. Knight Co.*, 156 U. S. 1; and *Kidd v. Pearson*, 128 U. S. 1, the Court holds that the manufacture of goods intended to be transported and subse-

quently shipped in interstate commerce is not interstate commerce.

The cutting of timber, for immediate transportation to other states, is not interstate commerce.

Coe v. Errol, 116 U. S. 517.

In *Carter v. Carter Coal Company* (*supra*), the Court makes the distinction between the *Swift Stockyards* case and cases similar to the case at bar. Citing *Arkadelphia Company v. St. Louis S. W. R. Company*, 249 U. S. 134, The Court says:

"One of the questions considered was whether certain shipments of roof material from the forest to mills in the same state for manufacture, followed by the forwarding of the finished product to points outside the state, was a continuous movement in interstate commerce. It appeared that when the roof material reached the mills it was manufactured into various articles which were stacked or placed in kilns to dry, the processes occupying several months. Markets for the manufactured articles were almost entirely in other states or in foreign countries. About ninety-five per cent of the finished articles was made for outbound shipment. When the roof material was shipped to the mills, it was expected by the mills that this percentage of the finished articles would be so sold and shipped outside the state. And all of them knew and intended that this ninety-five per cent of the finished product would be so sold and shipped. This Court held that the state order would not interfere with interstate commerce, and that the *Swift* case was not in point."

The Supreme Court also held that the *Swift* case was not in point in respect to the mining and shipment of coal. The Court says:

"The restricted field covered by the *Swift* and kindred cases is illustrated by the *Schechter* case (295 U. S. 495). There the commodity in question, although

shipped from another state, had come to rest in the state of its destination, and, as the Court pointed out, was no longer in a current or flow of interstate commerce. The Swift doctrine was rejected as inapposite. In the *Schechter* case the flow had ceased. Here it had not begun. The difference is not one of substance."

We contend that tobacco grown, handled and carried to market by a North Carolina grower, in the State of North Carolina, and there offered for sale, has not entered the flow of interstate commerce. The mere offering for sale of such tobacco upon a warehouse floor at auction in Oxford has no effect or influence upon interstate commerce nor does it burden commerce. It may never enter into interstate commerce. The grower may reject the sale and carry the tobacco back to his farm. It may be consumed locally. It may move to Durham, North Carolina, for storage or manufacture. It may be transferred to a redrying plant at Reidsville, N. C. There is no basis for an assumption that it will enter into the current of interstate commerce. The producer has no interest in its ultimate destination. The warehouseman has no control over its movement after it has been sold and moved by the buyer.

In *U. S. v. Butler*, 56 S. Ct., the Court says:

"The third clause (of the Constitution) endows the Congress with the power to regulate commerce among the several states. Despite a reference in its first section to a burden on, and an obstruction of, the normal current of commerce, the Act under review does not purport to regulate transactions in interstate or foreign commerce. Its stated purpose is the control of agricultural production, a purely local activity, in an effort to raise the prices paid the farmer."

The Court says further:

"The Act invades the reserved rights of the states. It is a statutory plan to regulate and control agricul-

tural production, a matter beyond the powers delegated to the Federal Government."

The courts have consistently denied to the Congress the power to regulate transactions not interstate in character. They have denied to the Congress the power to regulate the production of agricultural products.

The Tobacco Inspection Act states as its purpose the raising of prices to tobacco growers. If Congress could legislate for this purpose under the commerce clause, then certainly it could regulate production of agricultural commodities as a proven means of bringing about this desired result. But the Supreme Court has ruled against such regulation, however good its purpose and however successful its application.

If offering for sale tobacco constitutes interstate commerce, then the hauling of tobacco on the county roads by a North Carolina tobacco farmer is interstate commerce. The movement of the tobacco from the fields to the barns and to the packhouses would be interstate commerce; and, in fact, every movement of the tobacco from the transplanting of the plants to the field would become a part of interstate commerce. The contention of the complainants is that the movement does not partake of an interstate character until it has been sold and delivered to a purchaser, and actually has begun its journey in interstate commerce, or has been consigned to a carrier.

The ginning of cotton, although the cotton is to be immediately transported into interstate commerce, and although the cotton has already begun its journey from the fields to the market, is not interstate commerce.

Crescent Oil Co. v. Mississippi, 257 U. S. 129;

Federal Compress & Warehouse Co. v. McLean, 291 U. S. 17;

Chassanoil v. City of Greenwood, 291 U. S. 584.

In the case of *Federal Compress & Warehouse Co. v. McLean (supra)*, it was contended that cotton produced locally, shipped into a warehouse and there held at the exclusive disposition of its owners—the holders of negotiable warehouse receipts—retains its local status, although in the usual course the owners will ultimately order that it be compressed and delivered to a rail carrier for shipment to ultra State destination of their selection. This contention was sustained. The Court said:

“The business of storing and compressing the cotton, in such circumstances, is local, and a non-discriminatory state tax upon it is consistent with the Commerce Clause of the Constitution.”

The case of *Crescent Oil Co. v. Mississippi (supra)*, is directly in point. In this case a Tennessee corporation, finding it impracticable to successfully conduct its business without acquiring and operating gins in Mississippi and other States, purchased in those States from cotton growers the seed from the cotton ginned by them for the growers and then shipped the seed to its Tennessee factory. The Court says:

“Since the ginning was merely manufacturing, and the seeds were not in interstate commerce until purchased and committed to a carrier, the gins were not instrumentalities of interstate commerce, and prohibition of their operation did not infringe the Company’s rights under the Commerce Clause.”

The Court further says in this case:

“When the ginning is completed the operator of the gin is free to purchase the seed or not, and if it is purchased to store it in Mississippi indefinitely, or to sell or use it in that state or to ship it out of the state for use in another, and, under the cases cited, it is only in this last case and after the seed has been committed

to a carrier for interstate transport that it passes from the regulatory power of the state into interstate commerce and under the national power."

In the very recent case of *Burco, Inc., v. Whitworth*, 81 F. (2d) 721, Judge Soper used the following very pertinent language:

"The objection to the Public Utility Act is similar to that which proved fatal to the first child labor statute passed by Congress and considered by the Supreme Court in *Hammer v. Dagenhart*, 247 U. S. 251, 38 S. Ct. 529, 62 L. Ed. 1101, 3 A. L. R. 649, Ann. Cas. 1918E, 724. The statute was held unconstitutional on the broad ground that it was an attempt to regulate the internal affairs of the states. The court considered the rulings above cited and showed that they rested upon the exceptional character of the subjects of commerce dealt with, which justified the decision of Congress to exclude them from the channels of interstate trade. This element was held to be absent in the case before the court since the goods were themselves harmless, and the real thing intended to be accomplished by the statute was the denial of the facilities of interstate commerce to manufacturers who employed children within the prohibited ages. It was held that the grant of power to Congress to regulate interstate commerce does not authorize it to control the states in the exercise of their police power over local trade or manufacture.

"This ruling was repeated in the Child Labor Case (*Bailey v. Drexel Furniture Co.*), 259 U. S. 20, 42 S. Ct. 449, 66 L. Ed. 817, 21 A. L. R. 1432, where the court held that a so-called excise tax of 10 per cent of the net profits of businesses employing child labor was not in reality a tax but a penalty imposed for the regulatory purposes of prohibiting the labor of children in factories. In both of these cases, as in the present case, the Government urged that the legislation should be upheld because the evil aimed at affected the whole Nation; and could not be effectively cured

by the separate action of the several states, but only through an Act of Congress bearing upon all localities alike; but the court pointed out that it is as much its duty to strike down an unconstitutional act designed to achieve a desirable end if it is not within the power of Congress as it is to uphold an act passed in conformity with the Constitution, although the court may not perceive the wisdom of its underlying policy. Otherwise the dividing line between the powers of the national Government and the powers of the states would be obliterated."

The generation of electricity, which is instantly thereafter transmitted across State lines, is not interstate commerce.

Utah Power & Light Co. v. Pfof, 285 U. S. 165.

In *Heisler v. Thomas Colliery Co.* (*supra*), the Court says:

"The contention is that the products of the state that have, or are destined to have, a market in other states are subjects of interstate commerce, though they have not moved from the place of their production or preparation. The reach and consequences of the contention repel its acceptance. If the possibility, or indeed the certainty, of exportation of a product or article from a state determines it to be in interstate commerce before the commencement of its movement from that state, it would seem to follow that it is in such commerce from the instant of its growth or production, and in the case of coals as they lie in the ground. The result would be curious. It would nationalize all industry, it would nationalize and withdraw from the state jurisdiction and deliver to Federal commercial control the fruits of California and the south, the wheat of the west, and its meats, the cotton of the south, the shoes of Massachusetts, and the woolen industries of other states, at the very inception of their production or growth; that is, the fruits unpicked, the cotton and

wheat ungathered, hides and flesh of cattle 'on the hoof', wool yet unshorn, and coal yet unmined because they are in varying percentages destined for and surely to be exported to states other than those of their production."

We contend that if Congress has the power to compel a person to submit tobacco to Government regulations, prior to its sale and prior to its delivery to the buyer, under the Commerce Clause or the General Welfare Clause of the Constitution, then such power will deliver to Federal control the tobacco yet unplanted and unharvested and unsold, because it is in large percentage destined for and surely to be exported to States other than that of its production.

In *Coe v. Errol*, 116 U. S. 517, the Court says;

"That commodities produced or manufactured within a state are intended to be sold or transported outside the state does not render their production or manufacture subject to Federal regulation under the Commerce Clause.

"Though intended for exportation, they may never be exported. The owner has the perfect right to change his mind, and until actually put in motion, for some place out of the state, or committed to the custody of a carrier for transportation to such place, why may they not be regarded as still remaining a part of the general mass of property in the state?"

In the instant case, we contend that the flow of tobacco into interstate commerce had not begun prior to its sale or delivery, and therefore, as the Court says in the *Schechter* case (*supra*), "the want of power on the part of the Federal Government is the same, whether the wages, hours of service and working conditions are related to production before interstate commerce has begun, or to sale and distribution after it has ended".

In the declaration of policy, Section 2 of the Act, it states:-

"That transactions in tobacco involving the sale thereof at auction as commonly conducted at auction markets are affected with a public interest; that such transactions are carried on by tobacco producers generally and by persons engaged in the business of buying and selling tobacco in commerce; that the classification of tobacco according to type, grade, and other characteristics *affects the prices received therefor by producers*; that without uniform standards of classification and inspection the evaluation of tobacco is susceptible to speculation, manipulation, and control, and unreasonable fluctuations in prices and quality determinations occur which are detrimental to producers and persons handling tobacco in commerce; that such fluctuations constitute a burden upon commerce and make the use of uniform standards of classification and inspection imperative for the protection of producers and others engaged in commerce and the public interest therein."

In the *Guffey Coal* decision, *Carter v. Carter Coal Company* (*supra*), the Court, commenting upon a similar declaration of policy, says:

"These declarations constitute not enactments of law, but legislative averments by way of inducement to the enactment which follows."

These declarations in the Tobacco Inspection Act constitute not enactments of law, but legislative averments by way of inducement to the enactment which follows. Therefore, they become, in effect, self-serving declarations which add nothing to the validity of the Act; nor do they bring the subject within the range of the powers of Congress to regulate.

Neither can it be contended that the power to legislate for the common defense and general welfare of the United

States granted to Congress the power to enact this Act. It has always been conceded that the phrase "to provide for the general welfare" qualifies the power to lay and collect taxes. If we accept the view that the Congress has the power to legislate in this field because "fluctuations in price and quality determinations occur which are detrimental to producers and persons handling tobacco in commerce", it would be logical also for Congress to legislate if prices and quality determinations occur which are detrimental to buyers. In other words, if this Act is a valid exercise of the legislative power of Congress, then, too, it could legislate with equal validity against high prices received by farmers for their tobacco.

In *Hart Coal Corporation v. Sparks*, 7 Fed. Sup. 16, the Court says:

"He who would find in such cases as *Stafford v. Wallace*, and *Chicago Board of Trade v. Olsen*, authority for the exercise of such power has read the opinions of the Supreme Court on the subject to but little purpose, and fails to comprehend that those cases deal with acts, instrumentalities and agencies directly connected with or affecting interstate commerce, and in no wise involved the regulation of manufacture or production."

In the instant case, the tobacco upon which the Government is attempting to force compulsory inspection and certification has not entered into the flow of interstate commerce. The grower, after having cultivated and harvested his crop, places it in a truck or a wagon and carries it to the Oxford market. There he arranges it neatly in baskets provided by the warehouse for the purpose of displaying the tobacco for sale on the warehouse floor. The baskets of tobacco, after being weighed and identified as to ownership by tickets placed on the top of the baskets, are arranged in rows across the warehouse floor, where each basket is inspected by the buyers at the time of its sale.

The warehouses of these complainants are not "warehouses" within the usual meaning of the word. A tobacco warehouse is not a storage place, but is a market place, where the seller brings his tobacco to be sold, and the buyers go to buy. The warehousemen provide the building in which the tobacco is displayed for sale, and provide the physical equipment and the bookkeeping force necessary and incidental to the sale of tobacco at auction. Each day at a stated time the buyers gather in the warehouse, and each basket of tobacco is offered for sale at auction to the highest bidder. The warehouseman has the custody of the tobacco and offers it for sale as the agent of the grower. *After the auction sale has passed each basket of tobacco, the grower has the privilege of confirming or rejecting the sale, and until he confirms the sale the tobacco belongs to him and is in his actual possession. If the owner confirms the sale, the possession then, but not until then, passes to the buyer.*

Our contention is that prior to its actual sale and delivery, the tobacco has not become a part of interstate commerce, and therefore the Congress has no power to regulate transactions which occur prior to the sale. *The inspection and certification under the Tobacco Inspection Act takes place prior to the sale, and prior to the tobacco having been offered for sale. Therefore, we contend that the Act is invalid for want of power on the part of Congress to enact such legislation.*

In *United States v. Butler* (*supra*), this Court declared the Agricultural Adjustment Act unconstitutional, upon the ground that agricultural production was a local activity, and therefore beyond the power of Congress to regulate. It says:

"The Act invades the reserved rights of the states. It is a statutory plan to regulate and control agricul-

tural production, a matter beyond the powers delegated to the Federal Government."

In the case of *McCluskey v. Marysville & Northern Ry. Co.*, 243 U. S. 579, the Court says:

"When the products of the farm or the forest are collected and brought in from the surrounding country to a town or station serving as an entrepot for that particular region, whether on a river or a line of railroad, such products are not yet exports, nor are they in process of exportation, nor is exportation begun until they are committed to the common carrier for transportation out of the state to the state of their destination, or have started on their ultimate passage to that state."

We contend that the exportation of tobacco, brought to the warehouse by the grower from the surrounding country, and displayed for sale on the warehouse floor, has not begun, prior to its sale and delivery to the buyer by the grower.

The Tobacco Inspection Act is Unconstitutional in Substance and Materially Discriminating in its Application.

Under the provisions of this Act, Federal Inspection of tobacco is required on the Oxford market, while it is not required on other neighboring competitive markets. Under this Act a grower who patronizes the Henderson, N. C., market may sell his tobacco without Federal Inspection, while the grower who patronizes the Oxford, N. C., market violates a penal statute unless his tobacco is inspected by government inspectors prior to its being offered for sale.

As applied to complainants, if they offer for sale tobacco on their warehouse floor without Federal Inspection and grading they commit a crime and lay themselves liable to a fine and imprisonment. Warehousemen on markets other than the Oxford market, engaged in the same business, do

ing business in the same way, and competing for business among the same growers, can offer the same tobacco for sale in their warehouses without inspection.

The auction warehouse business, is highly competitive. Markets and individuals compete for the patronage of the tobacco growers. They operate under the same conditions, handle the same product, and are governed by the same economic laws. Therefore, a statute that imposes restrictions upon one group of warehousemen to the exclusion of another group is discriminatory and confiscatory. Manifestly this discrimination is not passive but active, and calculated to destroy the business of these complainants.

If it be conceded that the power exists under the Constitution to inspect and certify tobacco, the Government must use the power in accord with the principle of equal rights to all and special privileges to none. It must treat equally and alike each of its citizens engaged in a common enterprise. Material discrimination between citizens engaged in the same business can not be justified, however paternal the thought or worthy the purpose. The principle of equal rights is the cornerstone of free government.

To say to the complainants in Oxford, Thou shalt not, and to the warehousemen in Henderson, ten miles away, Thou mayest, violates the principle of equal rights to all.

In substance this Act says to complainants, "You must not offer for sale tobacco on your warehouse floors unless and until it has been inspected by government inspectors", and at the same time it says to warehousemen on 37 other competitive markets, "You may sell on your warehouse floors without inspection."

The Tobacco Inspection Act is not an act to aid the collection of revenue as the Harrison Narcotic Act, which was held constitutional in the *Doremus* case. Nor is it a regulation of interstate commerce, since it does not pretend to con-

trol the movement of tobacco in commerce. It places no restriction upon the movement of tobacco in interstate commerce. The thing sought to be regulated appears to be the auction method of selling tobacco.

Discrimination may mean confiscation, and, as applied in this case, the unreasonable discrimination against the business of the complainants leads to confiscation.

We contend that it is a material discrimination for the Government to exercise control and inspection over complainants' business, without maintaining the same inspection and control over the business of competitors engaged in the same business.

The Act is Invalid Because it Contains an Unconstitutional Delegation of Legislative Power.

Section 5 of the Act provides:

"That the Secretary is authorized to designate those auction markets where tobacco bought and sold thereon at auction, or the products customarily manufactured therefrom, moves in commerce. Before any market is designated by the Secretary under this section, he shall determine by referendum the desire of tobacco growers who sold tobacco at auction on such market during the preceding marketing season. The Secretary may at his discretion hold one referendum for two or more markets, or for all markets in a type area. No market or group of markets shall be designated by the Secretary unless two-thirds of the growers voting favor it. The Secretary shall have access to the tobacco records of the Collector of Internal Revenue, and of the several collectors of Internal Revenue, for the purpose of obtaining the names and addresses of growers who sold tobacco on any auction market, and the Secretary shall determine from said records the eligibility of such grower to vote in such referendum."

In the *Schechter* case the Court says :

“Congress can not delegate legislative power to the President to exercise an unfettered discretion to make whatever laws he thinks may be needed or advisable for the rehabilitation and expansion of trade or industry.”

Again the Court says :

“Such a sweeping delegation of legislative power finds no support in the decisions upon which the Government especially relies * * *. We think that the code-making authority thus conferred is an unconstitutional delegation of legislative power.”

In *Panama Refining Company v. Ryan*, 55 S. Ct. 241, the National Recovery Act was declared invalid, because it attempted to delegate to the President legislative powers without having established a standard or a rule under which the President should act. Article 1, Section 1, of the Constitution provides :

“All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives.”

In the instant case, the Act attempts to delegate to the Secretary of Agriculture the power to designate certain markets where tobacco bought and sold thereon at auction moves in commerce. The very wording of the Act would seem to infer that tobacco sold on markets not so designated by the Secretary does not move in commerce. The Act by a mere verbiage attempts to vest in the Secretary the power to declare a fact, and also the power to legislate concerning that fact. The attempted delegation of this power to the Secretary, whereby tobacco sold at auction on the Oxford markets moves in commerce, while the same tobacco if sold on the Durham market or other North Carolina

markets at auction does not move in commerce, is a fantastic travesty upon the principle of "equal rights to all".

Under this Act, if the Secretary does so designate a market, then it becomes a crime for a person to offer for sale tobacco on such market without its having been certified and inspected, while the same person may offer for sale the same tobacco on another market in the same state without violating the penal provisions of this Act.

If this law has any standing as a penal statute, it is because of the effect of executive action on the part of the Secretary. If he says so, it is unlawful to sell tobacco at auction on a certain market without inspection and certification; if he does not say so, the same act of selling on the same market is lawful. Clearly, this gives to the Secretary an unfettered discretion to designate when a law is a law, and when it is not a law, and to declare the same act as criminal in one place and perfectly legal in another though the difference at most is purely geographical.

Legislation of this character exalts the power of the central government and abridges the fundamental rights of the individual. Under the guise of benevolences and benefits, it invades the privacy of the individual and regiments him against his will. Through the false promise of benefits, it slips the handcuffs on individual liberty and subjugates the rights of the people to the Government. It makes a bureaucracy the master of the people.

The right to life, liberty and the pursuit of happiness is the fundamental right, paramount to and above the right to regiment even for the benefit of the people. All forms of tyranny are odious, it matters not whether it is from despots, dictators or bureaucracies. And the purpose of this Act, which we are now attacking, is to establish a dictatorship or a bureaucracy over the handling and sale of tobacco at auction. Measured by the yardstick of the decision in

the Guffey Coal case, the National Industrial Recovery case and the Agricultural Adjustment Administration case, this Tobacco Inspection Act shouts unconstitutionality from every page. Whether the end sought to be attained by this Act is legitimate is wholly a matter of constitutional power, and not at all of legislative discretion.

The Act is Invalid Because it Violates the Fifth Amendment to the United States Constitution, Which Provides That No Person Shall be Deprived of Life, Liberty or Property Without Due Process of Law.

We contend that the Act is invalid, as a violation of the Due Process Clause, in that it provides for a referendum through which the will of a majority may be imposed upon the minority. It delegates to a majority the power to pass compulsory legislation affecting a minority. In the *Guffey Coal* case (*Carter v. Carter Coal Company, supra*), the Court says, regarding the power of a majority to enact compulsory provisions:

"To accept in these circumstances is not to exercise a choice but to surrender to force. The power conferred upon the majority is, in effect, the power to regulate the affairs of an unwilling minority. This is legislative delegation in its most obnoxious form; for it is not even delegation to an official or to an official body, presumptively disinterested, but to private persons whose interests may be, and often are, adverse to the interests of others in the same business. And a statute which attempts to confer such power undertakes an intolerable and unconstitutional interference with personal liberty and private property. The delegation is so clearly arbitrary and so clearly a denial of the rights safeguarded by the Due Process Clause of the Fifth Amendment, that it is unnecessary to do more than refer to decisions of this Court, which foreclose the question."

We submit that the trumpet tones of this decision foreclose the Tobacco Inspection Act, which confers the power upon a majority to regulate the affairs of an unwilling minority.

Section 5 of the Act provides:

“No market or group of markets shall be designated by the Secretary unless two-third of the growers voting favor it.”

It is, therefore, possible, under the terms of the Act, for a small minority to impose its will upon a majority. For instance, should only ten per cent of the growers who patronize a market vote, then an affirmative vote of six and two-thirds per cent of the growers would impose the provisions of this Act upon such market. In fact, under the provisions of the Act, if only three growers who patronize the Oxford market should vote, an affirmative vote by two of these growers would impose the Act upon the Oxford market. Actually in the referendum, only 1782 growers voted in favor of grading, although 8608 ballots were mailed direct to growers.

The complainants are disqualified from voting under the terms of the Act, although it vitally affects their business and property, and although it imposes duties and expense upon them without remuneration from the Government. Therefore, although they have a real interest in the matter, and although their property rights are most seriously affected by the application of the provisions of this Act to the markets where the property of the complainants is situated, they are at the mercy of a group of growers who vote affirmatively in favor of the Tobacco Inspection Act. Although the power to legislate, under the Constitution, is reserved to the Congress, under the terms of this Act the power to legislate is conferred upon a group of growers who may be a very small minority of the whole class. Thus it can be seen that

this statute undertakes "an intolerable and unconstitutional interference with personal liberty and private property."

And it should be noted that after 1782 growers had voted compulsory grading on complainants floors, these growers are left at liberty to sell their tobacco ungraded on markets where there is no compulsory grading. In other words they put the shackles on the Oxford warehousemen, *who could not vote*, and leave themselves free to roam at will, and to sell their tobacco in any manner they choose, graded or ungraded.

Complainants contend, and by evidence have shown, that the application of the conditions provided for by the Tobacco Inspection Act will work a great hardship upon them in the conduct of their business; that other markets similarly situated which do not have this inspection and certification will have a competitive advantage over these complainants; and that such arbitrary discrimination, obvious on its face, is a violation of the Due Process Clause of the Constitution, and a violation of the personal and property rights of these complainants.

Conclusion.

We have attempted to show the Court that the Court has jurisdiction in the cause of action stated in the bill of complaint; that the complainants are in a position to invoke the aid of a court of equity; and that they are entitled to an injunction against the defendants.

We have also presented our contentions that the Tobacco Inspection Act is unconstitutional and invalid, for that:

(1) The said Act exceeds the powers granted to Congress under the Constitution of the United States, in that the transaction of offering tobacco for sale at auction does not constitute interstate commerce, within the meaning of the Commerce Clause of the Constitution.

(2) That the Act is unconstitutional in substance and materially discriminating in its application.

(3) That the Act contains an unlawful delegation of legislative power to the Secretary of Agriculture.

(4) That the said Act is in violation of the Fifth Amendment to the Constitution of the United States, which provides that no person shall be deprived of life, liberty or property without due process of law.

The first sentence of Section 2 of the Act asserts:

"That transactions in tobacco involving the sale thereof at auction as commonly conducted at auction markets are affected with a public interest."

We contend that the power to regulate transactions affected with a public interest is denied to the Congress by the Constitution.

The second sentence in Section 2 of the Act asserts:

"That such transactions are carried on by tobacco producers generally and by persons engaged in the business of buying and selling tobacco in commerce."

We contend that the power to regulate the buying and selling of tobacco in commerce is denied to the Congress by the Constitution of the United States, *unless* such commerce is interstate commerce or commerce with a foreign nation.

The third sentence of Section 2 of the Act asserts:

"That the classification of tobacco according to type, grade, and other characteristics affects the prices received therefor by producers."

We contend that Congress is without power under the Constitution to legislate regarding prices received by producers whether upward or downward.

The fourth sentence of Section 2 of the Act asserts:

"That without uniform standards of classification and inspection the evaluation of tobacco is susceptible to speculation, manipulation, and control, and unreasonable fluctuations in prices and quality determinations occur which are detrimental to producers and persons handling tobacco in commerce."

We contend that the Congress has no power to legislate to control fluctuations in prices and quality determinations.

The last sentence of Section 2 of the Act asserts:

"That such fluctuations constitute a burden upon commerce * * *."

We contend that the Congress is without power under the Constitution to regulate such fluctuations.

The Tobacco Inspection Act creates an unjust, inequitable and unfair situation. The complainants have large sums of money invested in Oxford in the warehouse business. They were disqualified from voting in the referendum. The qualified voters, who are the producers selling tobacco on the Oxford market, have no investment in the warehouse business in Oxford, yet seventeen hundred eighty-two (1782) votes out of eighty six hundred eight (8608), who were afforded an opportunity to vote, imposed upon the complainants the necessity of submitting to government inspection all tobacco offered for sale in their warehouses. The voters themselves are not compelled to submit their own tobacco to government inspection. They can sell it on auction markets within ten (10) miles of Oxford, free from inspection, or can sell it in Oxford free of inspection, provided only that it is not offered for sale in the auction warehouses at auction. There is no provision in the Act which compels a single grower who voted for compulsory inspection to submit his tobacco to the required inspection. Under this law the voters may vote conditions and restrictions upon complainants, without such restrictions being mandatory upon

the voters themselves. The old adage that "what is sauce for the goose is sauce for the gander" has no meaning or application under this Act.

The Act is so worded that a warehouseman in Oxford may be guilty of a criminal offense in doing the identical act that can be legitimately done ten (10) miles away. The complainants under this Act will lose their property and their liberty if they offer for sale tobacco without the inspection. Ten (10) miles away on the Henderson market tobacco warehousemen, engaged in the same business, with the same investment, and operating in the same manner, may sell tobacco at auction without let or hindrance.

The only thing standing between these complainants and confiscation of their property and their personal liberty is the protection of the Constitution, based upon the bed rock of "equal rights to all, and special privileges to none".

We contend that the Law is unconstitutional.

Respectfully submitted,

B. S. ROYSTER, JR.,

J. C. LANIER,

J. W. H. ROBERTS,

Counsel for Appellants.



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In the Supreme Court of the United States

D. T. CUMMINS, Plaintiff,
Doan Edmundson, Defendant.
Ford Norton, Intervenor.

HENRY A. WALLACE, Secretary of Agriculture,
New York, Intervenor.

ON PETITION FOR WRIT OF HABEAS CORPUS, AND
STATES OF NEW YORK, IN THE SECOND
CIRCUIT.

RECORDED IN THE OFFICE OF THE CLERK OF THE SUPREME COURT

In the Supreme Court of the United States

OCTOBER TERM, 1938

No. 275

D. T. CURRIN, S. M. CUTTS, AND H. A. AVERETT,
DOING BUSINESS AS FLEMING WAREHOUSE, OXFORD,
NORTH CAROLINA, ET AL.

v.

HENRY A. WALLACE, SECRETARY OF AGRICULTURE
FOR THE UNITED STATES, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH
CIRCUIT

MEMORANDUM FOR THE UNITED STATES

The Circuit Court of Appeals, reversing the District Court, held constitutional the Tobacco Inspection Act of August 23, 1935, 7 U. S. C. A. 511 *et seq.*, c. 623, 49 Stat. 731-735.¹

That Act provides, in summary, for the inspection and grading, by Government graders, before

¹The opinion of the District Court is not reported but appears in the record, p. 34. The opinion of the Circuit Court of Appeals appears in the record, p. 383, and is reported in 95 F. (2d), p. 856.

sale, of tobacco offered for sale by warehousemen as tobacco auctioneers. The great preponderance of all tobacco produced in the United States is sold in this manner. The Act provides for designation by the Secretary of the markets where tobacco bought and sold, or the products thereof, move in interstate commerce and makes the Act applicable to the markets so designated. It provides that before the Secretary may designate a market as subject to the provisions of the Act a referendum shall be held among the growers who sold tobacco on that market during the preceding marketing year and provides that no market shall be so designated unless two-thirds of such growers voting favor the establishment of the inspection service. The Act provides that if sufficient inspectors are not available, or if for other reasons, the Secretary is unable to provide for inspection and grading of tobacco at all markets within an area, he shall first designate those markets where the greatest number of growers may be served with available facilities. The Act provides for public notice that a market has been designated by the Secretary and provides that no tobacco shall be offered for sale at any market so designated until the tobacco shall have been inspected and certified by the Secretary's representative. It makes violation of the latter provision a misdemeanor and provides for a fine or imprisonment or both in case of a violation.

Pursuant to the Act the Secretary designated the market upon which the warehouses operated by the

petitioners are located. The petitioners sought to have the Act declared unconstitutional and to enjoin its application to their warehouses.

The District Court granted a temporary restraining order and, after hearing, a permanent injunction. The Circuit Court of Appeals reversed, holding (1) that although the petitioners had failed to show that substantial damage would fall upon them through compliance with the Act, they were entitled nevertheless to maintain the suit and, if the court were of the opinion that the Act is unconstitutional, to injunctive relief; (2) that the Act is a proper exercise of the power of Congress to regulate interstate commerce and is not an invasion of the reserved powers of the states; (3) that there was no unlawful delegation of power either to the Secretary of Agriculture or to the growers; and (4) that the Act does not deprive the petitioners of property without due process of law.

Although we believe that the result reached by the court below was correct we do not feel justified in opposing the granting of a writ of certiorari, in view of the importance of the questions concerning the constitutionality of the Act which were decided by that court.

We believe it desirable to point out, however, that, if certiorari should be granted, the Government intends to reassert the defense that the petitioners, having failed to show that they were threatened with any damage if they should comply with the Act, are not entitled to attack its

constitutionality. The record discloses that if they had complied with the Act in all likelihood they would have been benefited rather than injured.

If this Court should decide that the court below erred in rejecting this defense it would be unnecessary for it to pass upon the constitutional questions considered by the court below.

Respectfully submitted.

ROBERT H. JACKSON,
Solicitor General.

SEPTEMBER 1938.

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U.S. DEPT. OF JUSTICE

In the Supreme Court of the United States

D. T. CURRY, Plaintiff,
vs.
THE BOARD OF EXAMINERS OF THE
NORTH CAROLINA BAR, Defendant.

HENRY A. WALKER, Attorney for Plaintiff,
vs.
HENRY A. WALKER, Attorney for Defendant.

ON WRIT OF HABEAS CORPUS OF THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE FOURTH CIRCUIT.

ENTERED FOR THE UNITED STATES

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In the Supreme Court of the United States

OCTOBER TERM, 1938

No. 275

D. T. CURRIN, S. M. CUTTS, AND H. A. AVERETT,
DOING BUSINESS AS FLEMING WAREHOUSE, OX-
FORD, NORTH CAROLINA, ET AL., PETITIONERS

v.

HENRY A. WALLACE, SECRETARY OF AGRICULTURE FOR
THE UNITED STATES, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the District Court on the granting of preliminary injunction appears in the record at R. 31-43. The opinion of the District Court on the granting of permanent injunction is reported in 19 F. Supp. 211, and appears in the record at R. 95-110. The opinion of the Circuit Court of Appeals is reported in 95 F. (2d) 856, and appears in the record at R. 383-401.

JURISDICTION

Jurisdiction of this Court rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. The decree of the Circuit Court of Appeals was rendered on April 5, 1938 (R. 401-402). On June 30, 1938, the time within which to apply for writ of certiorari was extended to September 1, 1938, by order of Mr. Justice McReynolds (R. 403). Petition for certiorari was filed August 15, 1938, and was granted October 10, 1938. The United States did not oppose the granting of the writ, in view of the importance of the constitutional questions involved.

QUESTIONS PRESENTED

1. Whether the Act of Congress, approved August 23, 1935, known as The Tobacco Inspection Act (c. 623, 49 Stat. 731), is a constitutional and valid exercise of the power of Congress to regulate interstate and foreign commerce, or other powers of Congress.

2. Whether said Act provides for an unconstitutional delegation by Congress of its legislative powers.

3. Whether said Act deprives the petitioners of property in violation of the Fifth Amendment to the Constitution of the United States.

4. Whether in the circumstances disclosed by the record the petitioners are entitled to attack the constitutionality of the Act, or to equitable relief.

5. Whether in the circumstances disclosed by the record the petitioners are entitled to a declaratory judgment.

STATUTE INVOLVED

The statute here challenged is the Tobacco Inspection Act, approved August 23, 1935 (c. 623, 49 Stat. 731; 7 U. S. C., Supp. III, 511a-511q). It is set out in full at R. 19. It provides, in summary, for the inspection and grading, by Government graders, before sale, of tobacco offered for sale by warehousemen as tobacco auctioneers. The great preponderance of all tobacco produced in the United States is sold in this manner. The Act provides for designation by the Secretary of Agriculture of the markets where tobacco bought and sold, or the products thereof, move in interstate commerce and make the Act applicable to the markets so designated subject to the following two exceptions: Before the Secretary may designate a market as subject to the provisions of the Act, he is required to conduct a referendum among the growers who sold tobacco on that market during the preceding marketing year. No market may be designated unless two-thirds of such growers voting favor the establishment of the inspection service. Furthermore, if sufficient inspectors are not available, or if for other reasons the Secretary is unable to provide for inspection and grading of tobacco at all markets within an area, he is required to designate first those markets where the greatest number

of growers may be served with available facilities. The Act provides for public notice that a market has been designated by the Secretary and provides that after thirty days following such notice no tobacco shall be offered for sale at any market so designated until the tobacco shall have been inspected and its grade certified by the Secretary's representative. It makes violation of the latter provision a misdemeanor and provides for a fine or imprisonment or both in case of a violation. The Act provides also for inspection of tobacco by Government inspectors, for a fee, on the request of owners of the tobacco or others financially interested in it.

STATEMENT

(a) *History of the case*

The Act was approved August 23, 1935. Regulations were prescribed, effective January 2, 1936 (R. 191). On August 7, 1936, the official standard grades for flue-cured tobacco were prescribed pursuant to Section 3 of the Act (R. 203-218). On August 26, 1936, pursuant to Section 5 of the Act, the Secretary of Agriculture designated the market upon which the warehouses operated by the petitioners are located (R. 200-202). On October 24, 1936, the petitioners filed their bill in the District Court of the United States for the Eastern District of North Carolina, seeking to have the Act declared unconstitutional and to enjoin its application to their warehouses (R. 1-17).

The District Court granted a temporary restraining order on November 5, 1936 (R. 31-43) and, after hearing, issued a permanent injunction on April 24, 1937 (R. 110-112).

The Circuit Court of Appeals reversed, holding (1) that although the petitioners had failed to show that substantial damage would fall upon them through compliance with the Act, they were entitled nevertheless to maintain the suit and, if the court were of the opinion that the Act is unconstitutional, to injunctive relief; (2) that the Act is a proper exercise of the power of Congress to regulate interstate commerce and is not an invasion of the reserved powers of the States; (3) that there was no unlawful delegation of power either to the Secretary of Agriculture or to the growers; and (4) that the Act does not deprive the petitioners of property without due process of law (R. 383-401).

By the present writ of certiorari, petitioners seek reversal of this decision of the Circuit Court of Appeals.¹

The pleadings and evidence before the District Court and the Court of Appeals disclosed the following facts:

¹ The case was finally decided by the District Court (April 24, 1937, R. 110), and appeal to the Circuit Court of Appeals perfected (June-July 1937, R. 379, 382), prior to the enactment of the Act of Congress of August 24, 1937 (c. 754, 50 Stat. 752; 28 U. S. C., Supp. III, 401, 349a, 383a), providing for three judge District Courts and direct appeal to this Court in cases like the present one.

(b) *Interstate and foreign commerce in tobacco
sold on the Oxford market*

More than one-third of the total annual domestic production of tobacco in the United States is grown in North Carolina (R. 76, 134, 137). In 1935 about 79% of the flue-cured tobacco produced in North Carolina was exported to foreign countries or used in manufacturing operations in other states. The remaining 21% of the North Carolina tobacco was used in manufacturing operations within the State (R. 76). The tobacco was marketed on forty auction markets within the State. Three of these, Oxford, Goldsboro, and Farmville were designated in 1936 for compulsory grading and inspection under the Tobacco Inspection Act (R. 66, 67): As the Act anticipated, the personnel available for grading service could not cover all of the North Carolina markets (R. 64). These three markets were designated by the Secretary because voluntary inspection service had previously been in operation on them and the growers were familiar with the benefits of such inspection.²

Over two million pounds of flue-cured tobacco were sold on the Oxford tobacco market during the

² Voluntary inspection was first provided for in the United States Warehouse Act (Act of August 11, 1916, c. 313, 39 Stat. 486, 7 U. S. C. 241-273). Thereafter, the annual Agricultural Appropriation Acts provided funds for "Market Inspection of Farm Products," including, in 1930, and thereafter, appropriations for the inspection of tobacco.

week of October 29, 1936, the last full week before the temporary injunction was issued in this case. The major part of this tobacco had been grown in North Carolina, but a substantial part of it had come from Virginia farms (R. 76, 98). The chief purchasers of the tobacco sold on the Oxford market during that week and the amounts purchased by each were (R. 77):

Company	Pounds	Percentage of total
R. J. Reynolds Tobacco Company.....	322,806	15.3
American Tobacco Company.....	85,118	4.0
Liggett & Meyers.....	256,306	12.2
Idams Tobacco Company.....	467,023	22.2
Penn Tobacco Company.....	102,610	4.9
Export Leaf Tobacco Company.....	251,506	11.9
Imperial Tobacco Company.....	492,366	23.4
Total.....	1,977,637	93.9

These were only the "principal purchasers." Presumably the difference between the total poundage listed in the table and the 2,105,305 pounds sold (and the difference between 93.9 percent and 100 percent of the total sales) represents purchases by buyers other than those listed. The record indicates that, aside from the three companies first listed above, only one small company manufactures tobacco products in North Carolina (R. 77).

Only the first three of these purchasers are manufacturers of tobacco products (R. 77). The other four are engaged principally in the foreign export trade (R. 69). The R. J. Reynolds Tobacco Company has its factory at Winston-Salem, North Carolina, and all of the tobacco purchased by that company on the Oxford market is manufactured into tobacco products in North Carolina (R. 77). Both the American Tobacco Company and Liggett & Myers have factories both in North Carolina and in other States (R. 77). Accordingly, only about 15% of the tobacco sold on the market for that week

was definitely destined for manufacture in North Carolina (R. 77). The remaining 77% purchased by these companies was destined to be exported or to be manufactured into tobacco products partially in North Carolina and partially in other States (R. 77). Approximately 62% of it moved directly into foreign commerce (R. 69, 77).

(c) *Method of operation of the auction markets*

The buyers on this market are agents for the large tobacco companies (R. 69, 77). The tobacco warehousemen auction the tobacco. They are supposed to represent the growers and they receive fees from the growers at rates fixed by North Carolina laws.³

When tobacco is ready for the market, the grower grades it as best he can, arranges it in bundles or "hands," and hauls it to the auction warehouse (R. 71). There it is placed in baskets, and weighed by a warehouse employee (R. 71). The baskets are then arranged in rows on the warehouse floor and a ticket is placed on each pile (R. 71). When the sale begins the auctioneer proceeds along one side of a row of tobacco baskets, while the buy-

³ The scale of fees shown by the record are:

Ten cents per hundred pounds as a weighing fee, fifteen cents per hundred pounds as an auctioneer's fee, and $2\frac{1}{2}\%$ of the money received from each sale (R. 67, 68).

ers move with the sale along the other side (R. 71). Once the sale has started it proceeds with lightning-like speed. On the Oxford market the minimum speed allowed is 360 baskets per hour—one basket every 10 seconds (R. 71). Sales are conducted as fast as 525 baskets per hour, a rate of approximately a basket every 6 seconds. The sale is in constant motion. As the sale moves along the rows the buyers can pull samples from the piles, but frequently the sale moves so rapidly that they are unable to get close enough to pull a sample and examine it (R. 72). Often it is difficult even to tell which pile is being sold (R. 71, 72). The auctioneer intones the bids and offers so rapidly that his words constitute a jargon which can be understood only by one familiar with the auction system of marketing tobacco (R. 72). The offer is usually made by a motion of the head, a movement of the hand, a wink of the eye, or some other gesture known only to the auctioneer and the bidder (R. 72).

As soon as a sale is made, a ticket marker places the name of the buyer, the price, and the buyer's grade on the ticket (R. 71). The tobacco is then removed by the buyer from the warehouse floor, unless, before it is removed, the grower-seller has rejected the offer (R. 72). This can be done only by a grower present at the sale (R. 68).

(d) *Effect of haphazard grading*

Because of the speed at which the sale is conducted, few buyers have the opportunity to make a satisfactory examination of the tobacco being sold. Consequently they make many errors. This fact, coupled with the grower's lack of accurate knowledge of the grade of his tobacco and the current prices, results in extreme and haphazard uncertainty in the prices which a grower may receive for tobacco of any particular grade.

In one week, one of the companies buying tobacco on the Oxford market paid prices varying from \$1 to \$6 per 100 pounds for the same grade of leaf. For another grade, the price varied from \$18 to \$32 per 100 pounds. Still another grade showed a variation of \$19 per 100 pounds (R. 75). In another case tobacco was sold at 8 cents per pound at the auction sale; the owner rejected the bid and removed his tobacco to another row ahead of the sale. When the sale reached this basket half an hour later the identical tobacco brought 20 cents per pound, an increase of 150% (R. 84, 122). In other instances, growers following a similar procedure received prices 300 to 400% higher than that originally bid (R. 85, 122).

The individual grower suffers by any error which tends to produce a low price for his crop. The company, on the other hand, is not injured by paying too high a price for a particular basket of tobacco. It purchases large quantities and evens

up on those lots purchased below the average price (R. 75). Furthermore, the cost of the tobacco in tobacco products is very small in relation to the price received for such products by those who buy tobacco on auction markets and manufacture it.

(e) The effect of the statute upon operation of the market

The Act does not change the mode of operation of any auction warehouse on a designated market and requires no affirmative action by the warehousemen. It merely requires them to permit the Government inspectors to come upon the floor of the warehouse shortly before the sale, examine samples of tobacco from the various baskets, and mark the Government grade on the ticket already affixed to the pile of tobacco (R. 72). The statute obligates the warehouseman to have the tickets so printed that a space shall be left in which the grade may be marked and also requires that an extra carbon copy of the ticket be printed (R. 88, 92, Defendants' Exhibit No. 2, R. 115). The additional cost of these requirements is negligible.

The record shows that the inspection of tobacco by the Government inspectors is conducted in a neat and orderly manner, and that the piles of tobacco are not disturbed nor the appearance of the tobacco injured (R. 68, 73, 81, 82, 85). The record shows that the Government inspectors sometimes assist growers in improving the appearance of their tobacco (R. 84, 85).

(f) *Effect of information furnished growers under the Act*

The Act authorizes the Secretary to collect and publish timely information on the market prices for tobacco. Accordingly the Secretary has caused to be displayed daily in each warehouse on the Oxford market a detailed report indicating the average prices paid for the various Government grades of tobacco during the previous week (R. 73). The certification of grade following the inspection informs both the grower and the buyer of the grade of each lot of tobacco offered for sale. The Act thus gives the parties to the sale accurate and complete information as a basis for judging the fairness of any bid made for a basket of tobacco (R. 84, 85-87). Knowledge of both grade and current prices is obviously essential to an informed judgment. Before this Act was passed lack of such information left the grower in the dark as to the real value of his tobacco, inasmuch as the buyers keep the private grading systems which they use strictly confidential. This lack of knowledge on the part of the grower resulted in unreasonable fluctuations in the prices paid for identical grades and in the sale of much tobacco at far less than its actual value (R. 75, See House of Representatives Report, Appendix, p. 95; Defendants' Exhibit #3, R. 119-122; Defendants' Exhibit #4, R. 140-142, 180-182, 186-187). The Tobacco Inspection Act is designed to remedy these conditions by making

available to growers, as well as buyers, accurate information as to prevalent prices, and as to the grade of each lot of tobacco offered for sale. With such information the grower is able to decide intelligently whether to accept or reject any bid and the haphazard conditions described above are minimized.

SUMMARY OF ARGUMENT

Sales of tobacco for interstate and foreign shipment as conducted on auction warehouse markets are transactions in interstate and foreign commerce and are subject to Federal regulation. The requirement of this Act that tobacco sold at auction sales be graded according to standards established by the Federal Government is a valid exercise of the power to regulate such sales. The provision for inspection and certification of such tobacco prior to sale is likewise a valid exercise of the Federal power to regulate interstate and foreign commerce, as is the requirement that tobacco sold at such warehouses for interstate shipment, which is indistinguishable, until after the sale, from tobacco sold for interstate or foreign shipment, be also inspected and certified.

Furthermore, the provision for inspection and certification of tobacco sold on auction warehouse markets is a valid exercise of the power of Congress to fix the standard of measures and the power to procure information necessary to the effective exercise of the powers specifically granted to Congress.

These powers sustain the inspection of tobacco in the warehouses irrespective of whether it has then entered interstate commerce. These powers and the power to regulate interstate and foreign commerce exercised together in this Act sustain both the inspection and the prohibition of sale, at auction markets, of ungraded tobacco.

The provision requiring the Secretary of Agriculture to designate for inspection first the markets on which, with available facilities, inspection may be provided for the greatest number of growers does not involve delegation of legislative power to the Secretary of Agriculture. The standards to guide the Secretary in the selection of markets are clear and definite. Moreover, if this Act can be construed as delegating legislative power, under the doctrine of delegation as now applied, that doctrine should be reconsidered and limited to a scope consistent with the history of our constitutional development and with the practical effectiveness of democratic government.

The provision that inspection shall not be required on a market otherwise qualified if a specified proportion of the growers object in a referendum required by the Act does not delegate legislative power to the growers.

The petitioners have shown no property interest which is adversely affected or threatened with injury by the Act. Nor have they shown that even any expectancy of future gain is prejudiced by its operation. Accordingly, they have failed to show

that this Act injures them or threatens to deprive them of property. Having failed to show that they are injured by the Act, they cannot be said to be deprived by it of either constitutional rights or property. Moreover, the provision of the Act to which petitioners object as discriminatory, although they provide for application of the Act at some places and not at others, are thoroughly reasonable, are not discriminatory in the constitutional sense, and do not infringe the due process clause of the Fifth Amendment.

The petitioners have failed to show any threat of irreparable injury as the basis for the granting of equitable relief and have failed to show the existence of a justiciable controversy as a basis for a judgment under the Declaratory Judgments Act.

ARGUMENT

I

THE TOBACCO INSPECTION ACT IS A VALID EXERCISE OF THE FEDERAL POWER TO REGULATE INTERSTATE AND FOREIGN COMMERCE

The petitioners say that the thing sought to be regulated is the auction method of selling tobacco (Pet. Brief, p. 26). That is correct. The Act requires that tobacco shall not be sold at auction warehouses unless the persons buying and selling tobacco at such warehouses are informed of the grade and current prices of the tobacco in such manner as Congress has found necessary to assure

that the selling will be fairly conducted and free from the evils found disruptive of interstate commerce in tobacco.⁴

The petitioners claim that they offer tobacco for sale as the agent of the grower in such sales (Petitioner's Brief, p. 23), yet here they object to the provision made for giving information to the persons for whom they claim they are agents. The furnishing of such information imposes no burden on them and they neglect to make apparent any reason why any agent should object to his principal being informed of the value of the commodity which the agent sells for him.

Whatever may be the motive, the petitioners assert only technical objections. First, they say that tobacco auction sales are not a part of interstate commerce and that therefore the requirement cannot be made by the Federal Government; and, second, that since the determination of the grade must be made before the sale to make the regulation effective, it amounts to a regulation of intra-

⁴ Whatever amounts to more or less constant practice, and threatens to obstruct or unduly burden the freedom of interstate commerce is within the regulatory power of Congress under the commerce clause, and it is primarily for Congress to consider and decide the fact of the danger and meet it. This Court will certainly not substitute its judgment for that of Congress in such a matter unless the relation of the subject to interstate commerce and its effect upon it are clearly non-existent. *Stafford v. Wallace*, 258 U. S. 495, 521. See also *Chicago Board of Trade v. Olsen*, 262 U. S. 1, 37.

state commerce and cannot be required by the Federal Government. They say further that because the requirement applies to the relatively small quantity of tobacco sold for intrastate shipment as well as to that sold for interstate and foreign shipment, the Act is not a valid exercise of the commerce power. These objections are without merit. They will be considered in the order in which they have been stated.

Tobacco auction sales as conducted by the petitioners are clearly transactions in interstate commerce. The evidence is clear that the large majority of the tobacco sold through the petitioners' warehouses is sold for immediate interstate or foreign shipment.⁵ Apparently the petitioners' contention that such sales are not subject to Federal regulation is based upon the view that because the greater part of the tobacco sold on the Oxford market is produced in North Carolina the transactions by which it is sold are not a part of inter-

⁵ A substantial proportion of the tobacco sold on the Oxford market is grown in Virginia. The sale of such tobacco is clearly interstate commerce, but we do not rely upon this circumstance alone to sustain the regulation. Moreover, we do not rely upon the fact that a large part of the tobacco shipped after sale to factories in North Carolina for manufacture is subsequently shipped out of the State. Furthermore, we do not contend in this case, as the petitioners' brief seems to suggest, that the validity of this regulation rests on the proposition that the production of tobacco or its transportation from the farm to the auction market is a part of interstate commerce.

state or foreign commerce. We submit that this view is basically unsound. Sales of tobacco for interstate or foreign shipment are themselves transactions in interstate or foreign commerce. They may be prohibited by Congress if the tobacco offered for sale fails to satisfy requirements which Congress deems necessary to make effective the regulation of interstate and foreign commerce in tobacco which it has found to be appropriate and wise.

Furthermore, Congress may properly provide for such inspection and grading as is necessary to assure conformity with such requirements by all tobacco sold in interstate and foreign commerce through such warehouses, even though the inspection may occur before the tobacco enters such commerce.

The relatively small part of all the tobacco offered at such warehouses which is sold in intrastate commerce is indistinguishable from the interstate tobacco, directly affects the interstate and foreign sales, and is subject to similar regulation by Congress.

A. Congress may prohibit interstate sales of uninspected tobacco

Interstate commerce consists of buying and selling as well as transportation. The rule is well stated in *Dahnke-Walker Milling Co. v. Bondurant*, 257 U. S. 282 (p. 290):

Such commerce is not confined to transportation from one State to another, * * *

* * * where goods are purchased in one State for transportation to another the commerce includes the purchase quite as much as it does the transportation (*American Express Co. v. Iowa*, 196 U. S. 133, 143).

Similarly the rule is stated in *Shafer v. Farmers Grain Co.*, 268 U. S. 189, 198:

Buying for shipment, and shipping, to markets in other States when conducted as before shown constitutes interstate commerce—the buying being as much a part of it as the shipping.

See also *Swift & Co. v. United States*, 196 U. S. 375, 398; *Flanagan v. Federal Coal Co.*, 267 U. S. 222, 225; *Stafford v. Wallace*, 258 U. S. 495, 519; *Foster-Fountain Packing Co. v. Haydel*, 278 U. S. 1, 10; *Globe Elevator Co. v. Andrew*, 144 Fed. 871; *Krueger v. Acme Fruit Co.*, 75 F. (2d) 67, 68 (C. C. A. 5th).

Under that principle the sale of grain at country elevators has consistently been held to be a part of interstate commerce and accordingly immune from state regulation. *Lemke v. Farmers Grain Co.* 258 U. S. 50; *Shafer v. Farmers Grain Co.* (*supra*); *Dahnke-Walker Milling Co. v. Bondurant* (*supra*).

The grain trade in North Dakota, involved in the *Shafer* and the *Lemke* cases, is strikingly similar

to the North Carolina flue-cured tobacco industry. Like the North Carolina tobacco the grain is sold by the farmers locally. The buyers immediately transport the greater part of it to terminal markets in other States for resale. Only about 10% of the grain is manufactured and consumed in North Dakota and never leaves North Dakota.

If the States are powerless to inspect and grade crops sold interstate, Congress must possess that power. This was specifically stated in the *Lem'le* case, where the Court said (258 U. S. at 60-61):

It is alleged that such legislation is in the interest of the grain growers and essential to protect them from fraudulent purchases, and to secure payment to them of fair prices for the grain actually sold. This may be true, but Congress is amply authorized to pass measures to protect interstate commerce if legislation of that character is needed. The supposed inconveniences and wrongs are not to be redressed by sustaining the constitutionality of laws which clearly encroach upon the field of interstate commerce placed by the Constitution under federal control.

The principles applied by these decisions to sales of grain at country elevators for interstate shipment are clearly applicable as well to sales of tobacco at the warehouses for interstate shipment. Thus the sale of tobacco at the warehouse when the buyer immediately thereafter transports the tobacco out of the State is itself interstate commerce

and subject to Federal regulation.* The power of Congress to regulate the large proportion of sales for shipment abroad may be even clearer.†

* See the dissenting opinions in *Carter v. Carter Coal Co.*, 298 U. S. 238, 319-320, 326, which indicate that the price of coal sold at the mine for interstate shipment may be regulated under the commerce clause. The majority of the Court in the *Carter* case did not find it necessary to pass upon this question, and its opinion in no sense conflicts with the views of the minority here referred to.

† This Court has said that the power to regulate commerce, though conferred by the same words of the commerce clause, may not be so broad when exercised in respect of interstate commerce as when exercised as to foreign commerce. *Atlantic Cleaners and Dyers v. United States*, 286 U. S. 427-434. Whatever limitations the Fifth Amendment, or any other provisions of the Constitution, may impose upon the power to regulate interstate commerce, it appears that the power to regulate foreign commerce acknowledges no limitations. Thus, under the foreign commerce power, the Congress has a "plenary power in respect to the exclusion of merchandise brought from foreign countries" (*Buttfield v. Stranahan*, 192 U. S. 470-492); "so complete is the authority of Congress over the subject that no one can be said to have a vested right to carry on foreign commerce with the United States" (*The Abby Dodge*, 223 U. S. 166, 176, 178). Acting under the foreign commerce power, the Congress may "exclude merchandise at discretion" (*Buttfield v. Stranahan*, page 493), "for any reason" (*Brolan v. United States*, 236 U. S. 216-218); and the scope of this power is so thoroughly settled that contentions to the contrary are so devoid of merit as to cause them to be frivolous" (*Weber v. Freed*, 239 U. S. 325-329). Just as under the Tea Inspection Act, considered in *Buttfield v. Stranahan*, the power to regulate the importation of tea embraced the power to exclude tea for whatever reason, so under The Tobacco Inspection Act, the power of Congress in so far as it is exercised in relation to export tobacco is unqualified and unlimited.

The petitioners appear to contend that although the completed sale may constitute interstate commerce, the offer, acceptance of which completes the sale, is not a part of interstate commerce. To say the least, this effort to divide a sale into interstate and intrastate segments by driving a fine wedge between the offer and the acceptance is not persuasive. If selling commodities is interstate commerce each element of the transaction by which the sale is completed is equally a part of interstate commerce. If Congress can regulate sales by which commodities enter interstate commerce, it can regulate the offer as well as the acceptance. The regulation, if it be a regulation, imposed by this Act would be utterly ineffective if the grower were required to wait until after his tacit acceptance of the bid to be informed of the standard grade of the tobacco he had already sold. Obviously the concession which petitioners seem to make of a Federal power to regulate such a sale after it has occurred is merely a negation of the power to regulate the sale—a power long recognized by this Court.

B. Congress may provide under the commerce power for inspection of tobacco at the warehouse

If Congress can regulate the sale, it can require that the tobacco sold be graded so as to protect farmers against receiving unreasonably low prices at the sale. Cf. *Shafer v. Farmers Grain Company, supra*.

The petitioners claim in this case that because the inspection occurs before interstate commerce has begun, the Act is an attempt to regulate intrastate commerce. To this contention there are two answers.

First, the inspection is not in itself a substantial regulation of any activity of the petitioners. It prohibits no action by the growers or by the buyers of tobacco. Other than the requirement that the warehousemen provide, at negligible cost, tickets in duplicate in a form which provides space for noting the grade of tobacco, it requires no affirmative action by anyone except the Government inspector whom the warehousemen must permit to come on the warehouse floor to inspect the tobacco. Apparently the inspector's presence for this purpose is not deemed burdensome when he inspects for a fee at the request of owners of the tobacco. See note 9, page 26, *infra*. Certainly it is no more burdensome when he conducts free inspection pursuant to Section 5 of the Act.

Second, even if the inspection be deemed a regulation of the petitioners' activities in intrastate commerce, it directly affects the interstate and foreign commerce to be regulated and is necessary to the effective execution of the regulation of such commerce which Congress has prescribed in the Act. Consequently, it is within the power of Congress to enact laws necessary to the execution of its power to regulate the interstate commerce in tobacco.

Practical considerations dictate the time when the inspection must occur if the regulation is to be effective. When Congress merely provides that commodities not shown to meet the required standards cannot enter a transaction clearly in interstate commerce it is immaterial when the inspection, necessary to qualify the commodities for such commerce, occurs. Livestock are required to be inspected in order to exclude unwholesome meat from interstate and foreign commerce.^{*} Obviously if the purpose is to exclude such meat from interstate commerce the inspection must occur before it enters such commerce. In fact the law requires inspection before the live animals are even allowed to enter a slaughterhouse. Rejection from interstate commerce of products of uninspected animals has been sustained. *Pittsburgh Melting Co. v. Totten*, 248 U. S. 1.

In the case of tobacco the inspection is required in order to provide growers and buyers with accurate knowledge of the grade of the tobacco offered for sale. It must occur before the sale if it is to give them this information. The availability or absence of information as to grade provided by the inspection directly affects the interstate commerce which follows immediately after the inspection. Inspection after the sale could have no effect upon the evils inherent in such sales which Congress seeks by this Act to eradicate.

^{*} Act of March 4, 1907, c. 2907, 34 Stat. 1260.

It is apparent, therefore, that the provision for inspection is merely a necessary and proper means of making effective the power of Congress to regulate that part of interstate and foreign commerce in tobacco which takes place on the auction markets. Even if it occurs just before the tobacco has technically entered interstate or foreign commerce it is within the recognized power of Congress to regulate intrastate transactions which directly affect interstate and foreign commerce. *Virginian Railway Co. v. System Federation No. 40*, 84 F. (2d) 641, affirmed, 300 U. S. 515; *Minnesota Rate Cases*, 230 U. S. 352; *Shreveport Case*, 234 U. S. 342. Such regulation may be applied to acts which affect interstate purchases as well as interstate transportation. Cf. *National Labor Relations Board v. Jones and Laughlin Steel Corp.*, 301 U. S. 1, 38. It is not limited to intrastate action by persons another part of whose activities are interstate. Congress can regulate wholly intrastate activities of persons who engage in no interstate commerce whatever where such local activities directly affect interstate activities conducted entirely by others. *Consolidated Edison Company of New York et al. v. National Labor Relations Board et al.*, decided December 5, 1938, No. 19.

Here, regardless of whether the warehousemen's functions, including the offering of the tobacco for interstate sale, are wholly intrastate, as petitioners contend, the fact that the tobacco held for sale is

or is not accurately graded clearly affects the interstate sales. Consequently such tobacco is subject to regulation, and the warehousemen who have custody of it may be required to permit it to be inspected while it is in their custody.

Moreover, the petitioners do not seriously contend that the inspection substantially burdens or interferes with or regulates any activity of theirs except the sale of ungraded tobacco.* The real objection in this case is not to the inspection but to the prohibition of sales in interstate commerce of ungraded tobacco. That regulation is clearly within the power of Congress.

Congress has frequently exercised this power to require inspection and grading of commodities entering interstate and foreign commerce and has excluded from such commerce commodities which have not been inspected or which fail to meet the

* Inspection for a fee at the request of growers had been conducted for several years at the petitioner's warehouses (R. 85, 92), not only without their objection (R. 92), but, it is understood, with their complete cooperation. Even in this case they make no objection to such inspection although it would appear to affect them where applied in precisely the same way as the required inspection. In an unreported case similar to this (*Singletary and Epps et al. v. Wallace et al.*, in the District Court of the United States for the Eastern District of South Carolina) the plaintiffs particularly requested that the injunction sought should not interfere with the provisions of the Act when the grower requested that his tobacco be inspected and certified, and the order in that case so provided. It seems abundantly clear that warehousemen do not object to inspection, as such, being conducted at their warehouses.

standards deemed essential to the welfare of such commerce. Diseased livestock¹⁰ and diseased plants,¹¹ have been excluded from interstate commerce. Likewise grain,¹² and rosin and spirits of turpentine¹³ are required to be inspected and graded, or referred to according to prescribed standards, as a condition to their entering interstate commerce. Apples and pears may not be received for foreign shipment unless they are certified as conforming with prescribed standards of quality.¹⁴

Inspection of livestock¹⁵ has been held valid. *Pittsburgh Melting Co. v. Totten, supra*. The establishment and enforcement of Federal grain standards in interstate commerce has been tacitly approved by this Court in the cases cited above dealing with conflicting efforts by States to regulate grain standards. Others of these laws have been in effect for many years without question as to their constitutionality.

The time when the inspection must be made under such laws does not affect the validity of the

¹⁰ Act of May 29, 1884, c. 60, 23 Stat. 31.

¹¹ Act of March 4, 1917, c. 179, 39 Stat. 1165.

¹² Act of August 11, 1916, c. 313, 39 Stat. 482 (7 U. S. C. 71-87) (United States Grain Standards Act).

¹³ Act of March 3, 1923, c. 217, 42 Stat. 1435 (7 U. S. C. 91-99) (The Naval Stores Act).

¹⁴ Act of June 10, 1933, c. 59, 48 Stat. 123 (7 U. S. C. 581).

¹⁵ Act of March 4, 1907, c. 2907, 34 Stat. 1260.

regulation of commerce, to the accomplishment of which the inspection is necessary.

That the Tobacco Inspection Act is a valid regulation of interstate commerce is clearly indicated, though not specifically decided, in *Townsend et al. v. Yeomans et al.*, 301 U. S. 441. That was a suit brought by tobacco warehousemen to restrain enforcement of a Georgia statute fixing maximum charges for the handling and selling of leaf tobacco. The auction system of selling tobacco exists in Georgia in substantially the same form as it does in North Carolina. The warehousemen attacked the statute on the ground that the State of Georgia had no power to enact the regulation, as it attempted to govern transactions in the course of interstate and foreign commerce and, further, upon the specific ground that Congress had assumed exclusive jurisdiction over this field of legislation by passing the Tobacco Inspection Act. The Court held that the Georgia statute was not inconsistent with the Tobacco Inspection Act but, on the contrary, served further to carry out its purposes. The whole opinion indicates that the Court assumed that the transactions on the warehouse floor were in interstate and foreign commerce and that it sustained the Georgia statute merely because it did not impose any direct burden upon such commerce or conflict with the Tobacco Inspection Act. In the course of the Court's opinion it was said (p. 455):

Laying on one side the federal statute, [Tobacco Inspection] as in no way inconsistent, we find no ground for concluding that the state requirements lay any *actual* burden upon interstate or foreign commerce.

And further (p. 459):

Here the Georgia Act lays no constraint upon purchases in interstate commerce, does not attempt to fix the prices or conditions of purchases, or the profit of the purchasers. It simply seeks to protect the tobacco growers from unreasonable charges of the warehousemen for their services to the growers in handling and selling the tobacco for their account. Whatever relation these transactions had to interstate and foreign commerce, the effect is merely incidental and imposes no direct burden upon that commerce. The State is entitled to afford its industry this measure of protection until its requirement is superseded by valid federal regulation.

C. Congress may also prohibit the sale of uninspected tobacco in intrastate commerce in the circumstances prevailing on the auction markets

The appellants also claim that the Act is invalidated by the fact that it prohibits the sale of ungraded tobacco which is to be manufactured, and perhaps used, in North Carolina, as well as tobacco sold in interstate and foreign commerce. It cannot be denied that the tobacco to be sold intrastate will be inspected under the Act and that intrastate sales of uninspected tobacco are equally prohibited.

But Congress has the power to apply its regulation to both interstate and intrastate transactions when they are inseparably commingled, as they are here.

At the time of the auction sale, when the prohibition objected to becomes effective it is impossible to distinguish the intrastate tobacco from that sold in interstate and foreign commerce. At the time of the inspection—and indeed until the acceptance of the final bid, when the identity of the purchaser is first known—it is impossible to determine whether a particular lot will be shipped interstate or intrastate. Even after the sale it may not be possible to determine whether the immediate shipment will be interstate or intrastate if the buyer represents one of those companies having manufacturing facilities both in and out of North Carolina. In such circumstances the Federal power must apply to both or disappear altogether.

The courts have frequently held that Congress is not divested of its power to regulate an interstate activity merely because the regulation may also apply to interwoven and inseparable intrastate transactions. *Minnesota Rate Cases*, 230 U. S. 352; *Shreveport Case*, 234 U. S. 342; *Wisconsin Railroad Commission v. Chicago, B. & Q. R. Co.*, 257 U. S. 563; *Virginian Ry. Co. v. System Federation No. 40*, 84 F. (2d) 641, 647–651, affirmed, 300 U. S. 515.

Those decisions which have permitted the Federal and state governments to achieve legitimate ends even though the achievement entailed the reg-

ulation of certain activities which were normally beyond their reach are also pertinent. See *Jacob Ruppert v. Caffey*, 251 U. S. 264; *Westfall v. United States*, 274 U. S. 256. *Jacob Ruppert v. Caffey* involved the war-time prohibition Act, which prohibited the sale of both intoxicating and non-intoxicating liquor. In a previous decision (*Hamilton v. Kentucky Distilleries & Warehouse Co.*, 251 U. S. 146) this Court had held the statute valid upon the ground that the prohibition of intoxicating liquor increased the Nation's war efficiency. In the *Ruppert* case, *supra*, the plaintiff contended that the prohibition of non-intoxicants was void because it had no tendency to increase war efficiency. The Court rejected the argument because it felt that the prohibition of both was necessary if the prohibition of intoxicants was to be effective, saying (p. 301):

Since Congress has power to increase war efficiency by prohibiting the liquor traffic, no reason appears why it should be denied the power to make its prohibition effective.

In *Westfall v. United States*, 274 U. S. 256, Mr. Justice Holmes said (p. 259):

Moreover, when it is necessary in order to prevent an evil to make the law embrace more than the precise thing to be prevented it may do so.

Compare *St. John v. New York*, 201 U. S. 633; *Purity Extract & Tonic Co. v. Lynch*, 226 U. S. 192.

Since Congress has the power to require inspection and grading of tobacco sold for shipment in interstate commerce, it likewise has the power to make its regulations effective by enforcing the same requirements with respect to tobacco which is indistinguishable at the time the regulation is effective, but which thereafter proves to have been in intrastate commerce.

II

POWERS OF CONGRESS OTHER THAN THE POWER TO REGULATE COMMERCE SUSTAIN THE TOBACCO INSPECTION ACT

In the bill of complaint the petitioners allege that the Tobacco Inspection Act purports to derive its authority from the commerce clause of the Constitution (R. 6). Both courts below also treated it as based solely on the commerce power. The petitioners' argument may be construed as admitting that while, under the commerce clause, the United States might prohibit interstate or foreign sales of ungraded tobacco, it lacks power under the commerce clause to make such regulation effective by inspecting for grade, tobacco destined for interstate or foreign commerce before the tobacco has entered such commerce. We believe that this view is clearly erroneous, and that the Act, including its provision for inspection, is valid as an exercise of the commerce power and should be sustained on that ground, without more. However, we submit that other Federal powers, as well as the commerce

power, sustain the inspection of tobacco regardless of whether it is in interstate or foreign commerce when the inspection occurs, and that such powers together with the commerce power clearly sustain the Act in all particulars.

The burden is upon one who challenges the validity of a Federal Act to overcome the presumption of its validity¹⁶ and to show that it is not sustained by any one or any combination of the several powers of Congress.¹⁷ Congress, in a single statute, may exercise simultaneously any number of its powers. Such powers, used together, each sustaining a particular part of a plan of regulation, may sustain an Act, all parts of which could not be sustained by any one of the powers alone.¹⁸ Moreover, such separate powers used together may each support and contribute to the effectiveness of the other.

¹⁶ *Legal Tender Cases* (12 Wall. 457, 531); *Commonwealth v. Smith* (4 Binney 117, 123); *Sinking-Fund Cases*, 99 U. S. 700, 718; *Buttfield v. Stranahan*, 192, U. S. 470, 492; *James Everard's Breweries v. Day*, 265 U. S. 545, 560.

¹⁷ See *Cohens v. Virginia*, 6 Wheat. 264. In that case it was argued for the State of Virginia that "Any single measure which congress may adopt, must be justified by some single grant of power, or not at all. No combination of several powers can authorize congress to adopt a single measure which they could not adopt, either by one or another of those powers, combined with the power to pass necessary and proper laws for carrying such single power into effect" (p. 339). This argument was rejected in the opinion of the Court (pp. 423-429).

¹⁸ *Legal Tender Cases*, 12 Wall. 457; *Julliard v. Greenman*, 110 U. S. 421. See 2 *Story's Comm.*, Sec. 1256 (5th ed.); *Willoughby on the Constitution*, 2d ed., 1929, Sec. 54.

In *McCulloch v. Maryland*, 4 Wheat. 316, a combination of powers was held to sustain the power of Congress to establish a National Bank. In the *Legal Tender Cases*, 12 Wall. 457, a combination of powers was held to sustain the authority of Congress to issue irredeemable paper money and make it legal tender. See also *Cohens v. Virginia*, 6 Wheat. 264; *United States v. Gettysburg Electric Railway*, 160 U. S. 668.

The point we make here is not the assertion of inherent sovereign power of the United States to make any regulations that may be deemed necessary, implied from its essential sovereignty, although not expressly granted. It is merely that powers specifically granted to the Federal Government, other than the commerce power, sustain the inspection of tobacco even if the tobacco is not in interstate commerce when the inspection occurs, that the commerce power sustains the exclusion of ungraded tobacco from interstate commerce, and that these separate powers, exercised together and each sustaining a separate part of the plan embodied in this Act, are effective, in combination, to sustain the entire Act.

*A. Powers other than the commerce power sustain
Federal inspection of tobacco*

Section 3 of the Act provides that the Secretary of Agriculture shall establish and promulgate standards for measuring the quality of tobacco, for measuring its type, grade, size, condition, and other characteristics. These are to be the official

standards of the United States. We submit that the standards thus prescribed are standards of measure which Congress may prescribe under its power to fix the standard of measures, and that the inspection is an appropriate means of carrying that power into execution.

It seems clear historically that the Federal power to fix the standard of measures includes the power to fix standards for measuring characteristics other than mere length, area, and volume. Usage preceding the adoption of the Constitution indicates that "measure" did not then mean merely size.¹⁹ Quality was, and still is, an essential element of the measure of an object. In one sense "quality" is a synonym for "measure." In addition "measure" is used as an abstract word requiring specification of the characteristic to be measured. The word as used in the Constitution is not qualified. That it embraces the measure of quality is evident from the history of the provision. Standards of quality were insisted upon by those trading in commodities during the colonial period and particularly by those dealing in tobacco.²⁰ Laws were

¹⁹ See *Ryder*, A New Universal English Dictionary (1759), *Dyche*, a New General English Dictionary (1760), *Sheridan*, a Complete Dictionary of English language—which indicate that "measure" was then used with reference to the particular characteristic sought to be measured, as the measure of quantity, the measure of quality, the measure of ability.

²⁰ See *Turner v. Maryland*, 107 U. S. 38.

See also *Gray*, History of Agriculture in Southern United States to 1860 (1933), pages 224 *et seq.*; *Wickoff*, Tobacco Regulation in Colonial Maryland (1936).

adopted to establish standard grades and were considered as embodying the power to determine and enforce conformity with the standards established. These local laws fell short of desirable effectiveness because of variations in local practice and enforcement.²¹ When the Articles of Confederation were drafted Congress was empowered to fix the standard of weights and measures. The provision was carried over into the Constitution and was confirmed and supported by the additional power to revise and control state inspection laws.²²

²¹ *Gray*, op cit. *supra*, pages 219-276.

²² Constitution, Article I, Sec. 10, cl. 2, reads as follows:

"No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws; and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress."

In *Foot v. Maryland*, 232 U. S. 494, at page 503, this Court, considering the purposes of this expressly limited power of the states to provide for inspection, said: "Inspection is intended to determine the weight, condition, quantity and quality of merchandise to be sold within or beyond the State's borders. It is usually accomplished by looking at or weighing or measuring the thing to be inspected. * * *". It seems clear that power of the States to pass inspection laws, subject to revision and control by Congress, provides a means whereby the States may enforce, within the sphere of local state requirements, standards for measuring commodities. As is evident from the above quotation, such power applies to measures of quality. See also *Turner v. Maryland*, 107 U. S. 38, 49 *et seq.* The fact that the States' power is subject to the control of Congress indicates the existence of a power in Congress superior to that of

That standards of measure must include standards of quality would appear to be self-evident. The power appears obviously to be in part, at least, a power to provide standards to be used in commercial intercourse. Mere determinations of length, or area, or volume are of little or no practical significance in commerce if the substance of the thing so measured is unknown. The scope of the power to fix the standard of measures would be limited far short of the normal implications of the word "measure," if it should be construed as not including the power to specify standards for measuring the substance as well as the mere size of commodities. There is nothing in the language used nor in the history of the provision to justify such a limited construction.

Inspection of commodities is a necessary and proper aid to the determination of such standards. The power to fix standards of measure is not expressly related to the commerce clause nor limited by it. Such inspection of commodities as may be necessary to fix standards may be made without regard to whether the commodities inspected are in interstate or foreign commerce. The Tobacco Inspection Act provides for the fixing of standards for grading tobacco. But the Act itself did not fix the standards nor exhaust the Federal power to do

the States with respect to matters of national concern. Such Federal power must likewise extend to measures of quality, and must also include the power to enforce by inspection conformity with the standards prescribed.

so. On the contrary the Act provides that the exercise of the power shall be continuous. It not only authorizes the Secretary to issue tentative standards before he announces official standards but also provides that after official standards have been prescribed he may modify them. (Act, Sec. 3, R. 19 (2).) The inspection of tobacco about to be sold and the preservation of a record of the facts thereby observed, for both of which this Act provides and to both of which the petitioners appear to object, are appropriate means for making effective the power to fix standards for measuring the quality of tobacco.

Furthermore, such inspection is a necessary and appropriate means, and perhaps the only means, for determining whether tobacco conforms with the standards prescribed. It may be contended that the power to fix standards does not include the power to enforce compliance with such standards. As has been pointed out above, the historical development of the provision in the Constitution conferring this power indicates that at the time it was adopted, and previously, provisions for fixing standards implied the power to make the standards effective.

However, if it be said that the Federal power to enforce such standards is limited to transactions which themselves are subject to Federal regulation by virtue of some other provision of the Con-

stitution, it seems clear that this is such a case. The interplay of the two separate powers becomes apparent in such a situation. Congress, under the commerce power, here excludes from interstate commerce tobacco not shown to conform to one or another of the standards of quality which, under the power to fix the standard of measures, it has prescribed as the official standards for the United States. The enforcement of such standards requires merely that the grade of the tobacco be established. The inspection is merely the means of establishing that fact. It might be said that the power to regulate interstate commerce is being used as a sanction to enforce conformity in such commerce, with standards prescribed under the power to fix standards of measure. Or it might be said that the power to fix standards of measure, and to enforce their use in transactions within the purview of federal power, is being used as an aid to the effective regulation of interstate and foreign commerce. We submit that both are true. That each power is being used to aid the execution of the other. But if either is true, the power to inspect the tobacco before it enters interstate commerce is clear. In either case it is a necessary and proper means of making effective the power to fix, and in such transactions to enforce, Federal standards of measure. As a means of effectuating that power it need not await the commencement of interstate

commerce but may precede it if that is necessary to ascertain the conformity of the tobacco in question to the grades established under that power. Here we have two granted powers each used to aid the other; the power to fix standards of measure sustaining the establishment of the standard and the inspection, made to determine whether tobacco conforms with it; the power to regulate interstate and foreign commerce establishing the propriety of enforcing the standards and, by sustaining the exclusion of ungraded tobacco from such commerce, providing the means of enforcing them. Both are expressly granted powers. If inspection of the tobacco before it enters interstate and foreign commerce could not be sustained as a necessary means of enforcing the commerce regulation, it can be sustained as a means of carrying into execution the power to fix and enforce standards for measuring the quality of tobacco.

The right to inspect tobacco may be further sustained by the power constantly exercised by Congress to procure information necessary to the effective exercise of its granted powers. This power has been treated as a derivative or extension of the power to take a census. *United States v. Moriarity*, 106 Fed. 886 (C. C. S. D. N. Y., 1901). See also *United States v. Sarle*, 45 Fed. 191; *United States v. Mitchell*, 58 Fed. 993; *United States ex rel. City of Atlanta, Georgia v. Steuart*, 47 F. (2d) 979. It may be that the procuring of such infor-

mation may be more readily sustained as merely action necessary to the effective execution of the powers specifically granted to the Federal Government. Whatever may be the constitutional source of the power to procure such statistics it has long been exercised and has not been seriously questioned.

Sections 3 and 9 of The Tobacco Inspection Act (R. 19 (2) and 19 (4)) provide for the procuring of information regarding quality and prices of tobacco. The character of the information required is directly analogous to that required under the Census Act of March 3, 1899, involved in *United States v. Moriarity, supra*. The collection of tobacco statistics by the Census Bureau was specifically provided for in 37 Stat. 106-108. This function was later transferred to the Department of Agriculture (45 Stat. 1079) and eventually became Section 9 of The Tobacco Inspection Act and Section 1 of the Tobacco Statistics Act (49 Stat. 893, 7 U. S. C., Supp. III, 501).

The inspection of tobacco is an appropriate means of procuring such information regarding the quality of tobacco entering commerce. If this power had been exercised alone under this Act, there is little likelihood there would have been serious objection to the inspection. The fact that the information procured by the inspection is required to be made available forthwith to all growers to effectuate an exercise of the commerce

power, although it undoubtedly gives rise to the petitioners' objection, does not destroy the existence of either power, nor make the exercise of either power invalid. If they could properly have been exercised separately, they can be exercised with equal propriety together.

Furthermore, the existence of the power to inspect commodities is emphasized by the limitations imposed upon the recognized power of the States to enact and enforce inspection laws. The grant of Federal power to revise and control State inspection laws may not itself confer a Federal power superior to the States' power to enforce inspection laws, but it clearly recognizes the existence of such a power. It seems clear that the Federal power thus recognized is adequate to protect the exercise of any of the specifically granted Federal powers against interference by State inspection laws or by any levies made by States to support the enforcement of such laws; for example, to protect the enforcement of standards of measure prescribed under the powers to fix such standards and enforce them in transactions in interstate commerce.²³ Here again the power recognized may be merely the power to enact laws necessary to the effective execution of the granted powers. But such recognition in the field of inspection greatly strengthens the view that the Federal Government may inspect tobacco still in intrastate commerce if such inspec-

²³ See *Turner v. Maryland*, 107 U. S. 38, 57-58.

tion is necessary to maintenance of standards or to effective regulation of interstate commerce in tobacco.

That the power referred to by this limitation on the States' inspection laws sustains the Federal Government in the inspection of tobacco is suggested by a comment upon this clause made by Mr. George Mason in the Virginia Convention:

Mr. Chairman, if gentlemen will attend to this clause, they will see we cannot make any inspection law but what is subject to the control and revision of Congress. * * * Congress are to make regulations for tobacco (3 Elliott 481-482).

Any of these powers would justify the inspection required under this Act. Under none of them is the Federal power limited to commodities in interstate and foreign commerce. They are separate and independent Federal powers expressly granted or expressly recognized. They sustain the inspection, even if the tobacco when inspected on the warehouse floor is not in interstate commerce.²⁴

²⁴ Inspection of commodities incident to the maintenance of standards prescribed by Congress for commercial commodities has been frequently provided for. Cotton Standards Act, 7 U. S. C. 51-65; Naval Stores Act, 7 U. S. C. 91-99; Insecticides Act, 7 U. S. C. 121-134; Pure Food and Drugs Acts, 21 U. S. C.; Warehouse Act, 7 U. S. C. 241-273; Certification of Agricultural Products Act, 7 U. S. C. 414; Inspection of Perishable Products Act, 7 U. S. C. 499n. The Tobacco Inspection Act now challenged is but the most recent of this series of statutes.

In this view each of the two elements of this Act to which the petitioners seem to object is sustained by a separate Federal power; the inspection by the powers just discussed; the exclusion from interstate commerce of ungraded tobacco by the commerce power. Each of the specified powers exercised with respect to tobacco gives reciprocal support to the effectiveness of the other. If it should be held that neither is sufficient in itself to sustain all details of this Act, it would seem clear that used together they do sustain it.

III

THE TOBACCO INSPECTION ACT DOES NOT UNLAWFULLY
DELEGATE LEGISLATIVE AUTHORITY TO THE SECRETARY OF AGRICULTURE OR TO THE TOBACCO GROWERS

The contentions in this case illustrate the rather fantastic limitations upon the Congress which counsel read into the decisions of this Court on the subject of delegation of power. The confusion and uncertainty surrounding this subject not only lead earnest members of the profession into repeated attacks upon legislation as unlawfully delegating

These measures, having to do with commodities largely dealt with in interstate and foreign commerce, have been treated as resting upon the commerce power. The fact that each of them may be a valid exercise of that power by no means prevents them from representing at the same time, as we believe they do, a valid exercise of the power to prescribe standards for measuring quality, of the power to procure statistics with regard to commerce in commodities, and the express power to enact laws necessary to carry the commerce power into execution.

power, but also present to legislators a dilemma in framing legislation.

They are confronted on the one hand with the nebulous requirements of due process. If they pronounce a rigid set of standards, unforeseen cases to which the standards may apply present the danger of unconstitutionality because of caprice or arbitrary application. If, on the other hand, they seek to avoid the danger of capricious and arbitrary application through provision for flexibility in application, the statute is then attacked for undue delegation, an equally nebulous and undefined concept. This dilemma of avoiding the infirmity of unlawful delegation by running into the infirmity of caprice, or vice versa, faces legislators in most of their important tasks.

There is urgent need for some clarification of the doctrine of non-delegability. If it is to be applied to legislation, it is only just to legislators that standards be clearly outlined by which the adequacy of legislative standards is to be tested. The invocation of a vagrant and uncanalized judicial doctrine to prevent vagrant and uncanalized legislation leaves both legislators and litigants confused.

A. The status and basis of the doctrine of non-delegability

It is well settled that by judicial decision the Constitution does not completely forbid delegation of legislative power. It is acknowledged that power to determine the facts which will make legislation

applicable to the acts of particular persons or to particular things is the essence of executive administration of laws, and must and does exist. *United States v. Grimaud*, 220 U. S. 506; *Union Bridge Co. v. United States*, 204 U. S. 364; *Buttfield v. Stranahan*, 192 U. S. 470; *Monongahela Bridge Co. v. United States*, 216 U. S. 177; *St. Louis, I. M. & S. Ry. Co. v. Taylor*, 210 U. S. 281; *Avent v. United States*, 266 U. S. 127; *New York Central Securities Corp. v. United States*, 287 U. S. 12; *Federal Radio Commission v. Nelson Bros. Co.*, 289 U. S. 266; *Hampton & Company v. United States*, 276 U. S. 394.

On the other hand, it is held that the delegation must not be excessive. *A. L. A. Schechter Corp. v. United States*, 295 U. S. 495; *Panama Refining Co. v. Ryan*, 293 U. S. 388. It would appear that Congress has the power to make reasonable delegation and that the question presented by exercise of the power is not a question of law but a question as to what is, under the circumstances, a reasonable legislative policy—a subject of questionable justiciability.

It should be observed that, while the doctrine has long been discussed, no legislation of the Congress was stricken down upon that theory until within the past five years. It is also to be observed that the only cases in which legislation was held unconstitutional for excessive delegation were the *Schechter* and *Ryan* cases, both of which dealt with

a delegation to the President himself. These cases, therefore, involve the question of separation of powers, for the office of President was not created by the Congress and the President was not responsible to the Congress. The executive was there endowed with nonexecutive functions. The legislative power was there delegated to the President, whose powers are in many respects independent of the Congress. It is generally held that the Judiciary will not assume nonjudicial functions, and that Congress cannot assume nonlegislative functions. It was, therefore, with a measure of consistency that the Executive was excluded from legislative functions beyond those considered necessary in filling in the details of legislation and in determining its applicability.

It is apparent, however, from that circumstance in those cases, that there is no precedent in American constitutional law for striking down legislation which delegates legislative power to an agency created by Congress and controlled by Congress, and where the agency exercising the delegated powers is completely subject to the control of Congress and may at any time be abolished. Whether delegated to so-called independent establishments or boards, or whether delegated to members of the Executive Department whose offices owe their existence and powers to the Congress, these delegations have always been sustained.

The language of the Constitution refers expressly to delegation only in the Tenth Amendment, which provides for the reservation to the

States or to the people of "The powers not delegated to the United States by the Constitution."²⁵

These powers, thus delegated to the United States, are distributed by the Constitution, which provides that legislative powers "shall be vested in a Congress",²⁶ that the executive power "shall be vested in a President",²⁷ and that the judicial power "shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."²⁸

It would appear elementary that no department can *divest* itself of the power thus *vested* in it. In other words, there can be no *alienation* of power.

Delegation, however, stops far short of *divesting* or *alienation*. To turn over to a body created by and responsible to the Congress a defined and limited measure of power, or a power over a given subject or object, at all times subject to recall and supervision by Congress, is in no sense a *divesting* or *alienation* of its power.

The executive power which, it has always been assumed, can be delegated, and would be utterly impotent if it could not be delegated, is vested in the President by the same words that are used to vest the legislative power in the Congress. There

²⁵ Nor is the idea of non-delegability anywhere dealt with except perhaps in the prohibition that no money shall be drawn from the Treasury, but in consequence of appropriations made by law.

²⁶ Art. I, Sec. 1.

²⁷ Art. II, Sec. 1.

²⁸ Art. III, Sec. 1.

is no reason to imply a limitation in the language of one section that is not to be implied in the language of the other.

Moreover, the general language vests in the Congress powers which it is obvious could be exercised only through delegates. In the language of the Constitution it is in the Congress that power is vested to *collect* taxes, to borrow money, to coin money, to punish piracies, to raise and support armies, to maintain a navy. It is perfectly obvious that the body of the Congress would not and could not exercise these powers, but that they would be delegated. There is no more reason to doubt that the power to regulate commerce or the power to fix the standard of weights and measures would likewise be delegated.

The power conveyed to Congress to make laws necessary and proper to carry into execution other powers is an interesting grant. The Congress may make laws for carrying into execution what? Its own laws only? No! "To make all Laws which shall be necessary and proper for carrying into Execution the *foregoing Powers*, and *all other Powers* vested by this Constitution in the Government of the United States, or in any Department or Officer thereof." [Italics supplied.] Here in the language of the Constitution was quite clearly the broadest kind of power to choose the means by which *all power* under the Constitution is to be carried into execution. The only limitation which seems reasonable to imply is that any delegation

must stop short of a divestiture of power or an alienation of power. Such would be contrary to the provisions and plan of the instrument.

If it were intended that delegation should have been prohibited, it could have been accomplished by the simplest kind of phrase.

This silence of the Constitution on the subject of delegation has added significance when we consider that the constitutional convention was familiar with the extravagant delegation of governmental power which was in vogue in that day. Not only were the powers of government parceled out to public bodies, but all of the powers of government were actually alienated to trading corporations. There is no better example than the Hudson's Bay Company.

The Hudson's Bay Company was chartered by Charles II in 1670. Prince Rupert and 17 other noblemen and gentlemen were incorporated and granted "the whole and entire trade and traffic" to and from the Hudson's Bay country. The complete lordship and entire legislative, judicial, and executive power was given to the Company.²⁹ This

²⁹ Excerpt from the Royal Charter incorporating the Hudson's Bay Company, 22 Charles II (1670) (Willson, *The Great Company*, Vol. II, p. 327):

"And further, our will and pleasure is, and by these presents, for us, our heirs and successors, we do grant unto the said Governor and Company, and their successors, that it shall and may be lawful to and for the said Governor and Company, and their successors, from time to time, to assemble themselves, for or about any [of] the matters, causes, affairs, or business of the said trade, in any place or places for the

governmental power was held and exercised until November 19, 1869, when all its rights of government were returned to the public authorities by a deed of surrender in which the consideration was not merely nominal.

same convenient, within our dominions or elsewhere, and there to hold Court for the said Company and the affairs thereof; and that also, it shall and may be lawful to and for them, and the greater part of them, being so assembled, and that shall then and there be present, in any such place or places, whereof the Governor or his Deputy for the time being to be one, to make, ordain, and constitute such and so many reasonable laws, constitutions, orders, and ordinances as to them, or the greater part of them, being then and there present, shall seem necessary and convenient for the good government of the said Company, and of all governors of colonies, forts, and plantations, factors, masters, mariners, and other officers employed or to be employed in any of the territories and lands aforesaid, and in any of their voyages, and for the better advancement and continuance of the said trade or traffic and plantations, and the same laws, constitutions, orders, and ordinances so made, to put in use and execute accordingly, and at their pleasure to revoke and alter the same or any of them, as the occasion shall require: And that the said Governor and Company, so often as they shall make, ordain, or establish any such laws, constitutions, orders, and ordinances, in such form as aforesaid shall and may lawfully impose, ordain, limit, and provide such pains, penalties, and punishments upon all offenders, contrary to such laws, constitutions, orders, and ordinances, or any of them, as to the said Governor and Company for the time being, or the greater part of them, then and there being present, the said Governor or his Deputy being always one, shall seem necessary, requisite or convenient for the observation of the same laws, constitutions, orders, and ordinances; and the same fines and amerciaments shall and may, by their officers and servants from time to time to be appointed for that purpose, levy, take, and have, to the use of the said Governor and Company, and their successors,

Virginia itself was settled under charters granted to "the London Company" and to the "Plymouth Company" in 1606. The London Company in 1607 sent its first colonists to the James River.³⁰

without the impediment of us, our heirs or successors, or any of the officers or ministers of us, our heirs or successors, and without any account therefore to us, our heirs or successors, to be made: All and singular which laws, constitutions, orders and ordinances, so as aforesaid to be made, we will to be duly observed and kept under the pains and penalties therein to be contained; so always as the said laws, constitutions, orders and ordinances, fines and amerciaments, be reasonable and not contrary or repugnant, but as near as may be agreeable to the laws, statutes or customs of this our realm.

* * * * *

* * * and that the said Governor and Company shall have liberty, full power and authority to appoint and establish Governors and all other officers to govern them, and that the Governor and his Council of the several and respective places where the said Company shall have plantations, forts, factories, colonies or places of trade within any of the countries, lands, or territories hereby granted, may have power to judge all persons belonging to the said Governor and Company, or that shall live under them, in all causes, whether civil or criminal, according to the laws of the kingdom, and to execute justice accordingly."

³⁰ The story of its change of government is told by Hockett in "Political and Social Growth of the United States," pp. 55-56:

"These changes in the economic system were accompanied by changes of equal importance in the government. The arrangements for government were at first quite incidental, but the Company's enterprise was carried on so far from home that some provision was necessary for preserving order. Under the charter of 1606 the King retained the right to govern the settlers through a council in London which appointed members of the Company in the colony as a sub-

It seems clear that the people were not averse to delegation of legislative power or concerned about placing restrictions on such delegation for legislative delegation was a fairly common phenomenon in the statutes passed by the colonial governments themselves immediately prior and subsequent to the adoption of the Constitution.

Our hurried examination of the laws of the thirteen original States, both prior to and after the Revolution, discloses instances of delegation which

ordinate council, to rule according to instructions sent out from time to time. While as agents of government this council received orders from the King, as business managers for the Company they were subject to the instructions of the adventurers.

"The plan was too clumsy to work well, and under a new charter of 1612 the Company became a self-governing corporation, with the privilege not only of managing its business affairs but of governing the people in the plantation. It was authorized to hold a meeting in London four times each year, known as the 'General Court,' at which a majority of the stockholders present could elect officers and make 'such Laws and Ordinances for the Good and Welfare of the said Plantation' as they thought 'requisite and meet,' so long as they were not contrary to the laws of England. For the transaction of routine business there was a smaller body, including the officers chosen by the General Court. From this time the London Company was commonly known as the 'Virginia Company.'"

The charter to "The Treasurer and Company of Adventurers and Planters of the City of London, for the First Colony of Virginia" (Charter of James I, May 23, 1609) contains, among other grants of power, the following:

"XIV. And also to make, ordain, and establish all manner of orders, laws, directions, instructions, forms, and ceremonies of government and magistracy, fit and necessary, for and concerning the government of the said Colony and

undoubtedly could be multiplied upon further search. In the statutes which we have found, it will be observed not only that the extent of the delegation varied with the subjects of legislation but that what is known today as a primary standard was not always prescribed in the Acts by which the power was delegated. The occasion for delegation, moreover, seems clearly to have been the same then as it is now. No better proof of this statement could be desired than is found in the Act passed by the General Assembly of the State of Vermont on February 27, 1787 (Vermont Laws Revised, 1787 [Haswell] pp. 77-78). That statute is as follows:

Whereas it has been found by experience, that great advantage has been taken, by ferrymen demanding unreasonable prices for their service. And whereas, this assen-

Plantation; and the same at all times hereafter, to abrogate, revoke, or change, not only within the precincts of the said Colony, but also upon the seas in going and coming to and from the said Colony, as they, in their good discretion, shall think to be fittest for the good of the adventurers and inhabitants there (Sherman, 'Governmental History of the United States,' p. 65)."

In the third charter granted by James I to the London Company, the following provision is found (Charter of March 12, 1612):

"VIII. * * * and shall likewise have full power and authority to ordaine and make such laws and ordinances, for the good and welfare of the said plantation, as to them, from time to time, shall be thought requisite and meet: *always as the same be not contrary to the laws and statutes of this our realm of England*; * * * (Id., p. 79)."

bly cannot so well distinguish between the several rivers, and the several parts of said river, pond, or lake, on account of distance, swiftness of water, number of travelers, etc. Therefore to prevent such impositions for the future,

Be it enacted by the general assembly of the state of Vermont That the magistrates, selectmen, and constables, of the several towns where ferries are needed, shall meet before the first day of August annually, at a time and place by them agreed upon, and appoint proper persons and places for ferries, and provide suitable roads to and from the same; and further regulate the price thereof, according to the profits of such ferries, and price of labour; to be varied from time to time, as occasion shall require.

* * * * *

And if any person or persons shall transgress this act, by demanding any greater sum for ferriage than shall be stated by the authority aforesaid, he or they shall, for every such offense, forfeit the sum of fifteen shillings; * * *

It is apparent from the preamble to this Act that the legislature was compelled by the circumstances of the case to delegate the power to legislate to local authorities. Doubtless, similar circumstances induced the legislatures of other States to delegate rate-making power. In this regard, however, legislation was not uniform among the States or colonies. Sometimes the legislature itself promulgated rules to govern the operation of ferries and

prescribed in detail the rates which should be charged for the carriage of persons, animals, freight, etc.²¹ In other States the legislatures did not undertake to regulate public ferries and prescribe the rates therefor, but delegated the power to do so.²²

²¹ For examples of such laws see Virginia: Act 22 George II (1748), Chap. XI, Virginia Laws, 1769, pp. 204-213; Act of December 26, 1792, 1 Compiled Laws (1776-1807), pp. 221-228. Massachusetts: Vol. 1, Acts and Resolves of the Province of Massachusetts Bay, pp. 183-184; vol. 3 *Id.*, pp. 465-466; vol. 4 *Id.*, pp. 285-286. New Jersey: 1 New Jersey Laws (Nevill), pp. 35-36. Connecticut: 24 George II, (1750), Acts and Laws (to October, 1772), pp. 257-258; Acts and Laws (to May, 1787), pp. 74-77.

²² As noticed above, the Vermont legislature delegated the power to the magistrates, select men, and constables of the towns where the ferries were located. In Maryland the justices of the several county courts were authorized to grant a license to any inhabitant of the county to keep a public ferry, if said justices were of the opinion that a ferry ought to be kept and established there; and the justices were directed to—

ascertain in current money the price of ferriage for passengers and horses, and the several kinds of carriages (not allowing any thing for the baggage of passengers) at every ferry by them licensed; and the said justices shall direct how many and what kind of boats shall be kept, and what number of ablebodied and skillful hands shall be employed in the boats at every ferry by them licensed; * * * and if any licensed ferry-keeper shall ask or receive, directly or indirectly, more than the price allowed for ferriage, he shall, for every demand or receipt, forfeit twenty shillings current money; * * * 1 Maryland Laws (Dorsey), p. 173.

In New York, by an Act of March 8, 1773, the judges and assistant judges of the Inferior Court of Common Pleas for T.yon County were given full power and authority to appoint and settle ferries along the Mohawk River—

Delegation is also found frequently in the laws, rather common then, for the regulation of prices of commodities generally.³³

wheresoever the same shall appear necessary for the Ease and Convenience of the said Inhabitants, and to fix and ascertain the Ferriage for Travellers, and their Effects who shall pass the said Ferries, or any of them respectively. * * * 5 New York Colonial Laws, pp. 592-593.

In North Carolina the power to regulate ferry rates was delegated to the justices of each county wherein the ferry lay. North Carolina Laws (Iredell), 1715-1800, p. 391. See also *Id.*, p. 533. A similar Act was passed in New Hampshire on February 28, 1783, Laws of New Hampshire (1792), pp. 296-297.

³³ By the Act of 13 George II, 1 Delaware Laws (1797), pp. 192, 195, 196—

the Justices of the Peace in the respective counties within this government, during the sitting of the Quarter Sessions in the month of November in each year, are hereby impowered and required to make and settle such rates, prices and orders, on and for all sorts of liquors retailed by all masters and keepers of public houses of entertainment, as aforesaid, within the respective counties of this government, as to them shall appear to be just, meet and convenient; * * *

In North Carolina the General Assembly in 1779 provided (Iredell, *supra* at p. 392)—

That the Justices of each County shall once a Year, or oftener if necessary, after the first Court to be held after the first Day of January next, rate the Prices of Liquors, Diet, Lodging, Fodder, Corn, Provender and Pasturage, to be taken by Ordinary-Keepers; also the said Justices shall, at the same Time, rate the Prices of such Ferries as shall be kept within their respective Counties: * * *

In Georgia by Act of August 14, 1786, XIX, Part 2, Colonial Records of Georgia (Candler), pp. 556-560, the legislature delegated to the Superior Court of the County the power to fix the rates and prices to be paid at taverns for liquor, food, lodging, provender, stablage, and pasturage.

Another interesting type of delegation is that which related to the levying of taxes. It appears not to have been uncommon for the legislature to designate the amount of money to be raised by taxa-

The Pennsylvania legislature, in 1784, designated certain persons to be Wardens of the Port of Philadelphia and delegated to them power "to form and establish such rules and orders as they, on due deliberation and advisement, shall from time to time think requisite and proper for guarding against" the inconveniences and mischiefs frequently happening for want of order and regularity, in the placing, anchoring, and mooring of vessels in the stream, as well as at the wharves and docks. And penalty was prescribed for the breach of these rules.

In Connecticut the Governor, Council, and Representatives, in general assembly enacted—

That any Town in this State shall have Authority, in Town Meeting, to make Rules and Ordinances for regulating the Fisheries of Clams and Oysters, within their respective Limits, or the Waters and Flats to them adjoining and belonging, and for Preservation of the same; and to impose such Penalties as shall be thought proper by such Towns, for the Breach of such Rules and Ordinances. *Provided*, That no such Penalty shall exceed the Sum of *five pounds*, lawful Money. Connecticut Acts and Laws (to May 1787), pp. 78-80.

In Georgia by Act of February 27, 1770, XIX, Part 1, Colonial Records of Georgia (Candler), pp. 140-144, the exportation of corn meal was prohibited "until the first day of September next, * * *." But the Governor was authorized to lift the prohibition upon its appearing to him that there was a sufficient quantity of corn fully to answer the necessities of the inhabitants. And it was further provided that whereas it might be necessary after September 1 to prohibit exportations at a time when the General Assembly "cannot without manifest inconvenience be called together" the Governor, with the advice and consent of the Majesty's Council, was authorized after September 1 to prohibit export of corn meal when the market price exceeded 2 shillings 6 pence

tion and to fix the sum due from the several counties in the State but to leave it to the discretion of the county commissioners and assessors to fix the quota for each township in the county and to distribute the levy upon the taxable subjects within the township.³⁴

It seems also not to have been unusual for the legislature to fix the size and weight of such commodities as bread, sometimes directly, sometimes through some delegated agency.³⁵

per bushel. By Act of July 30, 1783, XIX, Part 2; *Id.* pp. 243, 247-248, this Act was continued, but it was declared that the Governor could lay an embargo only in a particular emergency and that the legislature should be convened as soon as thereafter as agreeable to law in order to pass on the expediency and propriety of continuing the embargo.

³⁴ See Act of March 27, 1778, Chapter LIX, Pennsylvania Laws (McKean), p. 118; see also *Id.*, pp. 198, 239; Act of June 22, 1782, Chapter CCCXVI, 2 New Jersey Laws (Wilson), pp. 273-287. See also *Id.*, pp. 377-380.

³⁵ In Delaware, for example, by act of 13 George II, 1 Delaware Laws (1797), p. 185, and 15 George II, *Id.*, p. 251, the Lieutenant Governor and General Assembly provided that all soft or loaf bread baked or to be baked for sale within the counties of Kent and Sussex should be either white, middling, or brown and that—

the Justices of the Court of Quarter-Sessions for the said counties respectively, shall and are hereby empowered and required, from time to time, at their Quarterly Sessions of the Peace, to settle and appoint the size and weight of the several sorts of bread which shall be baked for sale * * *

(The language of the two Acts is substantially the same; the first related to the town of Newcastle, and the second to the towns of Dover and Lewes.) In South Carolina in 1749, a very detailed table of the size of bread in pounds, ounces, and drams, with the price "by the Hundred, or Five

It was, no doubt, this familiarity with the practice of delegation that caused the argument in *McCulloch v. Maryland*, that a privately owned corporation was not a necessary and proper means of carrying express or implied powers of government into execution, to fall upon deaf ears. The assumption underlying the decision of that case is that the Bank of the United States was an instrument to which certain governmental power could properly be delegated. Marshall boldly declared (4 Wheat. 316, 408):

The power being given, it is the interest of the Nation to facilitate its execution. It can never be their interest, and cannot be presumed to have been their intention, to clog and embarrass its execution, by withholding the most appropriate means.

And he said (p. 421):

* * * the sound construction of the constitution must allow to the national legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are

Score Pounds, in current Money," was enacted into law. South Carolina Public Laws (Grimke), pp. 219-221. However, in 1784 the power to regulate the price and size of bread in the city of Charleston was vested in the City Council of that city. *Id.*, pp. 346-347.

plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional.

And all arguments that the legislature might not delegate to the bank the power to set up branches to which it could further delegate some of the power and immunities of the Government ³⁶ were

³⁶ In the argument against the bank the power of Congress to delegate to the directors of the bank the legislative power to establish branches was challenged (pp. 334-337). The forcefulness with which the contention was urged is evident from the following excerpts:

"It is undoubtedly true, that these branches are established with a single view to trading, and the profit of the stockholders, and not for the convenience or use of the government; and therefore, they are located at the will of the directors, who represent and regard the interests of the stockholders, and are such themselves. * * * It is true, that, by the charter, the government may require a branch in any place it may designate, but if this power is given only for the uses or necessities of the government, then the government only should have the power to order it. In truth, the directors have exercised the power, and they hold it, without any control from the government of the United States; * * *. A most extravagant power to be vested in a body of men, chosen annually by a very small portion of our citizens, for the purpose of loaning and trading with their money to the best advantage! * * *. But if these branches are to be supported, on the ground of the constitutional necessity, and they can have no other foundation, the question occurs; who should be the judge of the existence of the necessity, in any proposed case; of the when and the where the power shall be exercised, which the necessity requires? Assuredly, the same tribunal which judges of the original necessity on which the bank is created, should also judge of any subsequent necessity requiring the extension of the remedy. Congress is that tribunal; the only one in which it may be safely trusted; the only one in which the states

brushed aside by the following language (pp. 424-5):

After the most deliberate consideration, it is the unanimous and decided opinion of this court, that the act to incorporate the Bank of the United States is a law made in pursuance of the constitution, and is a part of the supreme law of the land.

to be affected by the measure, are all fairly represented. If this power belongs to congress, it cannot be delegated to the directors of a bank, any more than any other legislative power may be transferred to any other body of citizens: if this doctrine of necessity is without any known limits, but such as those who defend themselves by it, may choose, for the time, to give it; and if the powers derived from it, are assignable by the congress to the directors of a bank; and by the directors of the bank to anybody else; we have really spent a great deal of labor and learning to very little purpose, in our attempt to establish a form of government in which the powers of those who govern shall be strictly defined and controlled; and the rights of the government secured from the usurpations of unlimited or unknown powers. The establishment of a bank in a state, without its assent; without regard to its interests, its policy or institutions, is a higher exercise of authority, than the creation of the parent bank; which, if confined to the seat of the government, and to the purposes of the government, will interfere less with the rights and policy of the states, than those wide-spreading branches, planted everywhere, and influencing all the business of the community. Such an exercise of sovereign power, should, at least, have the sanction of the sovereign legislature, to vouch that the good of the whole requires it, that the necessity exists which justifies it. — But will it be tolerated, that twenty directors of a trading corporation, having no object but profit, shall, in the pursuit of it, tread upon the sovereignty of the state; enter it, without condescending to ask its leave; disregard, perhaps, the whole system of its policy; overthrow its institutions, and sacrifice its interests?

The branches, proceeding from the same stock, and being conducive to the complete accomplishment of the object, are equally constitutional. It would have been unwise, to locate them in the charter, and it would be unnecessarily inconvenient, to employ the legislative power in making those subordinate arrangements. The great duties of the bank are prescribed; those duties require branches; and the bank itself may, we think, be safely trusted with the selection of places where those branches shall be fixed; reserving always to the government the right to require that a branch shall be located where it may be deemed necessary.

The practice of delegating some part of the sovereignty is thus old and approved. And many years ago the practice began of delegating such legislative functions as rate-making, guided only by such standards as "reasonableness," "nondiscrimination," and "public convenience and necessity." When these delegations first began, these words were almost without content and their settled meaning of today has been the result of the exercise of the delegated power rather than the result of any experience that existed before its delegation.

In imposing a limitation after one hundred and fifty years, great care should be taken to distinguish between an attempt to *alienate* power and an attempt to *delegate* power. Delegation of authority, which is subject to supervision and to recall, if abused, is quite another matter than an attempted alienation which would work a modification of the constitutional system.

This recent doctrine of strict non-delegability, itself one of most nebulous content and extent, and creating grave doubts as to what functions can be delegated, simply results in the centralization in Congress of work essentially administrative that could far better be performed if delegated. A doctrine which tends to require a great volume of administrative work to be half done by a central legislative authority rather than to permit the same volume of work to be well done and well considered by a more decentralized administrative authority, is to be asserted with definiteness and applied with caution.

A clear statement of the proper rule would not only relieve the Government from the necessity of defending each law in which Congress imposes administrative duties upon an executive officer against attempts to extend the principles stated in the *Schechter* and the *Panama* cases to fantastically restrictive extremes. It would also enable the Congress in drafting laws to keep within the still vague limits of its power to delegate and yet, at the same time, avoid frustrating democratic government by rules so rigid as to preclude effective administration.

With the growing complexities of life and the consequently expanding functions of government, the doctrine of strict non-delegability is the most potent force for insuring inefficiency and incompetence in the process of public administration. In dealing with many of the complicated situations encountered by modern government, attempts to express standards assured of conformity with the

apparently prevailing rule are met with the difficulty that if standards existed which could be suitably expressed according to that rule the delegation might not be necessary. That precisely expressed standards to be workable must in many cases be the product of experience is more strikingly evident now than it was when "public convenience and necessity," then undefined by experience or previous application, was deemed a sufficiently explicit guide to sustain the administration of laws. In those days the objectives were broadly stated and the guides to their achievement phrased in general language. That was considered sufficient. On that structure a highly successful government was established and conducted without serious abuse of power. Modern conditions require a return to this older rule, so clearly perceived and declared by Marshall, or a clear indication that it has not been abandoned.

But even under a strict rule of non-delegability there could be no serious doubt that this Act supplies the Secretary with standards wholly adequate to guide his determination of the markets to which the regulations imposed by the Act shall apply. Nor can there be serious doubt that the Act does not contain any unconstitutional delegation of legislative power to tobacco growers.

B. The Tobacco Inspection Act does not delegate legislative power to the Secretary of Agriculture

Section 5 prescribes the standard to guide the Secretary in the designation of markets where in-

spection is to be required. The standard is clear and unequivocal. Its objectives are apparent from the language used. It is obviously capable of practical administration and is capable also, if necessary, of judicial review to determine whether the power delegated has been properly exercised.

It is evident from a reading of the section, and from the report of the committee of the House of Representatives on the bill, Appendix, p. 98, that Congress intended that the Act should apply eventually to all auction markets where tobacco is sold into interstate commerce and where such inspection is not objectionable to more than a third of the growers affected. It is equally clear that Congress was aware of the fact that inspection could not be provided for all such markets immediately upon the Act becoming effective; that adequate competent personnel was not available for that to be done, that sufficient additional personnel could not be made available in time to extend the service to all markets in the first year or for some time thereafter, and that other practical factors also would prevent inspection being made immediately available on all markets. Accordingly, Congress did not make the futile and wasteful gesture of appropriating sufficient money to finance inspection in the first year on all markets but rather kept the appropriation within the amount deemed necessary to make such competent inspection as could be provided available to as many growers as possible. The standard prescribed for selection of

the markets where inspection is to be required is consistent with this situation which Congress faced and specifically provided for.

It is apparent from Section 5 that the Secretary is to determine first, whether tobacco sold on any market moves in interstate or foreign commerce. He must determine whether more than a third of the growers who in the previous year sold tobacco on the market object to the general requirement of free federal inspection on the market. He must determine also upon which of the markets inspection could be made available to the largest number of growers using the facilities available. This last determination is required only in case sufficient competent inspectors are not available to provide such inspection on all markets in a type area, or if, for other reasons, the Secretary is unable to provide such inspection at all markets in the type area.

These are all facts which the Secretary can readily determine. The means of determining them are readily available. The Act itself provides, in the requirement of a referendum, a useful source of information to aid the Secretary in determining upon which market the most producers could be served with the available facilities. There is nothing vague or indefinite about these standards. They are far more definite and precise than the standard of "public convenience, interest, or necessity" found in the Radio Act of 1927, 44 Stat. 1162, 1163, which was held valid in *Federal Radio Commission v. Nelson Bros. Co.*, 289 U. S. 266.

They appear elaborate when contrasted with the standard of "public interest" which has been sustained in several cases involving the Interstate Commerce Commission. *Avent v. United States*, 266 U. S. 127; *New York Central Securities Corporation v. United States*, 287 U. S. 12. They are clearly as definite as the standard for making rules and regulations "to improve and protect the forest within the reservation, and to secure favorable conditions of water flows," held valid in *United States v. Grimaud*, 220 U. S. 506.

Obviously, it would have been impractical for Congress to require the Secretary to bring to Congress for its specific action each determination required to be made under this section such, for example, as the question whether, in view of the facilities available, more growers could receive the benefits of inspection on one market than on another, or whether the amount of tobacco available for inspection on a market justifies the cost of the service, or whether the facilities available are sufficient to continue the service in two designated markets or only one. These are simple questions of practical administration, not questions of legislative policy. The legislation could not have been made effective if Congress had been required to act upon each of them. There is no principle of due process or of the doctrine of separation of powers which requires that Congress retain the onerous duty of making such detailed factual determinations as these. It is difficult to imagine how, within the limits of prac-

tical government, Congress could have pointed out more clearly what it intended the Secretary to do in administering this phase of this law. We submit, that the provisions for the designation of the markets subject to inspection are safely within the limits of the long established rule that Congress may delegate the duty of determining facts and applying a law to the situation disclosed by those facts if it is a situation to which the law is apparently intended to apply. Although the Secretary is authorized to designate markets for inspection, it is clearly evident that he is not given unrestrained power to select any market he sees fit.³⁷

C. The Tobacco Inspection Act does not delegate legislative power to tobacco growers

Section 5 provides that before he designates a market for inspection the Secretary shall conduct a referendum among growers who sold tobacco on

³⁷ It may be said that the Act merely authorizes the Secretary to designate the markets upon which the inspection is to be applied but does not require him to do so. The language of the section is evidently mandatory. It is well settled that the word "authorized," when directed to an administrative officer in defining his duty, means "directed." *United States Sugar Equalization Board v. P. De Ronde & Co.*, 7 F. (2d) 981 (C. C. A. 3d); *United States v. Cornell Steamboat Co.*, 202 U. S. 184. Moreover, Section 5, read in its entirety, discloses clearly that the Secretary is required by Congress to proceed as rapidly as the facilities available will permit, to designate all interstate markets on which not more than one-third of the growers object to inspection, commencing with the market on which, with available facilities, he can make inspection available to the greatest number of growers.

the market the previous year to determine their attitude towards inspection. Unless two-thirds of the growers voting favor the inspection, he is not to designate the market even though it meets the other specified requirements for designation.

Petitioners claim that this provision "delegates to a majority the power to pass compulsory legislation affecting a minority" (Pet. Br. p. 29). They insist that it enables the growers to "impose" the inspection on a particular market. Clearly the law does not so provide. Congress imposes the regulation, tells the Secretary how to select the markets, and merely adds that he shall not impose it if a specified proportion of the growers voice objection to it. They can initiate no action whatever which could lead to the imposition of inspection on a particular market.

The petitioners suggest no constitutional obligation resting upon Congress to provide that a commercial regulation, however desirable, shall be forced upon unwilling beneficiaries. Congress, having the power to impose the requirement, and having provided for its imposition, need not have made this concession. It could have imposed the regulation without regard to the sentiment of the growers. But in providing that the Secretary should ascertain their attitude and should not impose the regulation if that attitude is adverse, Congress has not relinquished any of its legislative power. It has merely refrained from exerting that

power as rigorously as it might have done. No delegation of legislative power is involved.

No action of the growers could require the Secretary to designate a market which does not meet the other requirements. On the other hand, Congress has expressed a clear intention that the inspection *shall* apply to all markets which do meet such requirements *unless* the growers object. The petitioners are not subjected to the will of the majority of the growers voting because the Act does not authorize the majority either to determine what the law shall be or to determine that it shall apply to any market to which Congress has not clearly indicated it intends it to apply. The most that can be said with regard to the referendum is that the fact that two-thirds of the growers voting favor the inspection is one of several facts which the Secretary must find as a condition precedent to the law becoming effective on any market. The establishment of such a condition is not a delegation of legislative power.

^a Furthermore, the referendum serves a distinct practical purpose. It indicates definitely in advance potential difficulties of enforcement and points out the existence of objections to the proposed regulation which in the light of protests expressed through the referendum may be adjusted by subsequent legislation so that the regulation may be more useful and more effectively administered. The mere provision for an expression of opinion by persons affected by regulatory legislation is not inconsistent with any recognized principle of our form of government. Moreover, it gives extraordinary assurance of the reasonableness of the regulation. (See p. 86, *infra*.)

A requirement that the Tariff Commission must make investigation of differences in cost of production as a necessary preliminary to changes by the President in duties was held in *Hampton & Co. v. United States*, 276 U. S. 394, not to be an unlawful delegation of power to the Tariff Commission, the Court pointing out (p. 405) that the Commission did not fix the duties. The Court there strongly asserted the power of Congress to require, as a condition of a law becoming effective that it be ascertained whether persons affected by it favor the regulation, saying (p. 407) :

Congress may feel itself unable conveniently to determine exactly when its exercise of the legislative power should become effective, because dependent on future conditions, and it may leave the determination of such time to the decision of an Executive, or, as often happens in matters of state legislation, it may be left to a popular vote of the residents of a district to be effected by the legislation. While in a sense one may say that such residents are exercising legislative power, it is not an exact statement, *because the power has already been exercised legislatively by the body vested with that power under the Constitution, the condition of its legislation going into effect being made dependent by the legislature on the expression of the voters of a certain district.* [Italics supplied.]

Similarly in *Cusack Co. v. City of Chicago*, 242 U. S. 526, an ordinance was held valid which pro-

hibited the erection of billboards, unless owners of the majority of the property in the block in which the billboard was to be erected consented. There, as in this case, the legislative authority imposed the restriction, conditioned, however, upon its being relaxed if it were found that those primarily benefited by it preferred that it not be imposed.

The situation here, as in the *Cusack* case, is completely different from that involved in *Carter v. Carter Coal Co.*, 298 U. S. 238, in *Washington ex rel. Seattle Trust Co. v. Roberge*, 278 U. S. 116, and in *Eubank v. City of Richmond*, 226 U. S. 137. In the *Carter* case the statute provided that the consensus of the majority should bind the dissenting minority and have the force of law. In the *Roberge* case, the ordinance permitted a building, not shown to be objectionable, to be constructed only if the consent of neighboring property owners was obtained. There was no legislative determination that the building should not be built but rather a contrary expression. Accordingly the neighbors had the power to prohibit the building, not to relax a prohibition expressed by the ordinance. In the *Eubank* case, the officials were required to establish building lines detrimental to the property of non-assenting property owners whenever owners of two-thirds of the property in any block requested them to do so. The regulation was left to the capricious, uncontrolled whim of neighboring property owners.

In each of those cases the vote of the majority was effective to impose the regulation, uncontrolled by the legislature or by any executive officers. Here, on the other hand, the Congress has imposed the regulation, and the attitude of the growers is merely a fact to be determined before the power already exercised by Congress shall become unconditionally effective.

Even where private individuals are enabled to call the regulation into operation, regulation under a general legislative enactment has been sustained. Thus in *Doty v. Love*, 295 U. S. 64, this Court sustained a Mississippi statute which permitted the reopening of closed banks upon terms proposed by three-fourths of the creditors provided the Superintendent of Banks and the Court of Chancery approved the plan. The Court pointed out that such a provision is not an unlawful delegation of power to the majority creditors, although in that case the creditors had the right to initiate the plan. (The growers have no such right here.) As the Court indicated, in such a case the dissenting creditors are not subject to the will of the assenting three-fourths but the superintendent and the court, who were required to approve the plan, are charged with the duty of making the determinations essential to its becoming effective. See also *Booth v. Indiana*, 179 Ind. 405 (1913); affirmed on appeal, 237 U. S. 391.

It has already been pointed out (pp. 60-63, *supra*) that in *McCulloch v. Maryland*, *supra*, this Court

found no difficulty with the delegation to the directors of the bank of the power to select the places where branches should be established, although it had been contended forcefully (pp. 335-337) that the power to select the location of branches could not be delegated to the directors of a bank "any more than any other legislative power may be transferred to any other body of citizens."

We have found no cases in which this Court has invalidated a law on the ground of unlawful delegation where, as in this case, the legislation has imposed a regulation and provided merely that it shall not be effective if those primarily affected disapprove its application. In this case the growers cannot impose their will on anyone. Clearly this Act involves no unlawful delegation of law-making power.

IV

THE PETITIONERS HAVE SHOWN NEITHER ANY DEPRIVATION NOR ANY THREAT OF DEPRIVATION OF THEIR PROPERTY, NOR ANY INTEREST SUFFICIENT TO PERMIT THEM TO RAISE QUESTIONS OF DUE PROCESS OR TO OBTAIN INJUNCTIVE RELIEF OR A DECLARATORY JUDGMENT

The petitioners contend that the Tobacco Inspection Act is discriminatory in its operation because it is effective only with respect to auction markets and as to these, only with respect to certain markets designated by the Secretary. They assert that these circumstances threaten them with

damage, and that the provisions for selection of markets are unconstitutionally discriminatory.

This argument presupposes that the petitioners have some legal interest to which injury could conceivably be sustained through the operation of this statute. The record is clear, however, that no rights of the petitioners are affected by this Act and that no property of theirs has been damaged or is threatened with damage.

The inspection provided for, and all action by the Government with respect to it, occurs while the tobacco is in the unqualified ownership of the grower and while the petitioners have no legal interest in it except perhaps that of a bailee for hire. Petitioners' conception of their relationship is stated in their brief (Pet. Br. p. 23):

The warehouseman has the custody of the tobacco and offers it for sale *as the agent of the grower*. [Italics ours.] After the auction sale has passed each basket of tobacco, the grower has the privilege of confirming or rejecting the sale, and until he confirms the sale the tobacco belongs to him and is in his actual possession.¹

It is clear, therefore, that this statute does not affect tobacco which is the property of the petitioners and that their effort here is not to protect any property right in the tobacco, because they have none.

¹ In their brief this sentence is italicized.

Their interest lies rather in the compensation which they receive for their services in connection with the sale of such tobacco, a flat price per pound plus a small commission on sales—in protecting allegedly probable future commissions as agents of the growers. Not only do they fail to show that they have any present right or interest in such future commissions but it is clear from the record that the Act does not threaten even that expectancy of commissions. On the contrary, it tends to enhance the volume of business received by warehousemen whose markets have the inspection service.

A. Petitioners show no vested right in any future commissions

However probable their receipt of commissions from the sale of tobacco may be, they are purely conjectural. The petitioners fail to show the existence of any contract for future services which would give them a legal right at any time prior to the completion of a sale to a commission on any tobacco. On the contrary, they themselves claim that growers are free to sell their tobacco at any warehouse (Pet. Br. pp. 10, 31). The petitioners have established no property right in future commissions which might be diminished, even if their most gloomy predictions concerning the effect of inspection should have proved to be true.

B. The Tobacco Inspection Act takes nothing from such rights or opportunities as the petitioners may have to earn commissions

The Act does not affect the petitioners' rate of commission or the basic compensation. They are free to sell any tobacco properly graded. Their relationship to the grower is exactly the same under the Act as it was before the Act. The only difference in their situation is that under the Act they will be agents of growers who are accurately informed of the grade of their tobacco and are in a position to know the price it ought to bring; whereas, under the existing practice, they are the agents of uninformed growers less able to protect their interests. It can hardly be contended that the petitioners, claiming to be agents for the growers, have a vested property interest in their principals' lack of information or that they are damaged by their principals' being better qualified to protect themselves. It would seem that their interests as agents for the growers would be the opposite of those they appear to claim.

Moreover, the evidence fails to show any threat that the petitioners' commissions would have been diminished by the operation of the Act. Their effort to show damage is directed along two lines. *First*, they claim that the requirement of inspection deflects from their warehouses business they might normally receive and that they would be less likely, if this Act applied to them, to become the

chosen agents of growers than are warehousemen on markets nearby which may not have been designated. The evidence clearly shows this claim to be unfounded in fact. *Second*, they claim that the required inspection is likely to result in diminished prices to the growers selling on inspected markets and that therefore their warehousemen's commissions will suffer a proportionate reduction. The evidence likewise fails to support this claim.

With respect to the claim that the requirement of inspection deflects business from their warehouses, it is merely necessary to point out that although in previous years they had enjoyed substantially more than half of the business on the Oxford market throughout the whole marketing season, and although for the first three months of the 1936-1937 season, when inspection was first in effect, they continued to enjoy a similarly preponderant part of the business on the Oxford market, their share of the business dropped off sharply after the temporary injunction was issued in November 1936.²⁷

²⁷ The following table introduced at the trial (R. 77) shows the petitioners' proportion of all sales on the Oxford market each month during the 1935-1936 marketing season as well as during the 1936-1937 season. The temporary injunction was issued November 5th of the latter marketing season.

Complainants' Percentage of Total Sales during the 1935-1936 Marketing Season		Operations for the Same Warehousemen during the 1936-1937 Season
59.2%	September	61.8%
63.0	October	57.6
60.5	November	57.7
63.7	December	52.8
62.6	January	49.0

During November the entire market was congested, and on five out of the fourteen days between November 5th and Thanksgiving the market was "blocked"—more tobacco was offered than could be sold during the sales hours that day (R. 68, 72, 73). While this congestion persisted growers could not readily shift from the petitioners' four uninspected warehouses to the three inspected warehouses of non-complaining warehousemen. However, when the congestion on the market diminished after November, tobacco was moved freely by growers from petitioners' warehouses to warehouses where the benefits of free government grading and inspection were available (R. 87). This decrease in the petitioners' volume of business after government inspection at their warehouses was enjoined is particularly significant in contrast to their relatively constant share of the sales for the previous year. The evidence is clear that although the petitioners, having more facilities, customarily had a larger share of the business on the market than the non-complaining warehouses, and maintained their advantage while all warehouses had inspection, they lost much business to the inspected warehouses after the injunction, because inspection was no longer available at their warehouses. In the light of such evidence their claim that the Act threatened them with loss of business, and therefore loss of probable commissions, is plainly unproved.

They also fail to prove their second claim, that the act threatened their commissions because, even

though the inspection might not have diminished their volume, or even though it might have increased it, it would have resulted in lower prices to those growers who might still continue to patronize their warehouses. They attempt to prove this by a curiously delusive calculation. They show merely that the *average* prices received on their four uninspected warehouses during the *entire* three months period after the injunction was issued were higher than the average prices received during that period on the three inspected warehouses on the Oxford market. They ask the court to conclude from this fact alone that if inspection had been effective at their warehouses during that period, they would have lost commissions on the whole quantity they sold during that time, proportional to the differential in this average price. Obviously these figures prove nothing of the sort. They do not show that the prices paid at their warehouses for any particular grade of tobacco during that period were higher than the prices paid for comparable grades at the inspected warehouses. Nor do they show that this difference in the *average* prices resulted from or was connected in any way with the government inspection. This average price has no significance whatever as affirmative proof of threatened loss. The average figure is deceptive. The reasons for the difference in *average* prices, and the error in the conclusion which petitioners would have the Court draw from it are apparent from a consideration of

the shift of business from petitioners' warehouses to the inspected warehouses during the latter two months of the period, together with the downward shift in the total volume of business and in daily average prices on the market from the beginning of the period to the end. The markets were crowded and large quantities of tobacco were sold during November (R. 72, 73, 94). The average prices are higher then than they are later in the marketing season (R. 91, 93, 94). Because the markets were crowded the petitioners' four warehouses retained substantially more than half of this large volume, high price business done on the market during the first month after the injunction was issued. Thereafter their part of the total business declined sharply so that they had a much smaller, and the inspected warehouses a correspondingly larger proportion of the later low-priced business. The combined effect of these shifts is obvious. By using the whole three-month period the average is weighted heavily with the large volume of high priced sales petitioners enjoyed during the period before growers were free to shift from their warehouses. Inevitably, their average was higher, but it was higher because they had such a relatively small share of the low-priced business transacted after the lack of inspection at their warehouses drove the producers to the inspected warehouses. It is upon this evidence and this alone that their whole claims of threatened damage rests. Clearly it does not prove that by en-

joining the inspection they prevented lower prices to their patrons and averted a threatened loss of commissions. On the contrary, it merely emphasizes the uncontested fact that they lost business after they excluded inspection from their warehouses.

In summary the petitioners have failed completely in this case to show that this act deprived them of any property, or threatened to deprive them of any property, or even threatened to deprive them of a conjectural expectancy. Instead, the evidence is clear that had they not resisted compliance with it they would have benefited.

Having failed to show that they are injured by this law the petitioners cannot be said to be deprived by it of either constitutional rights or property. *Cusack Co. v. City of Chicago, supra*; *Plymouth Coal Co. v. Pennsylvania*, 232 U. S. 531.

C. The Tobacco Inspection Act is not unconstitutionally discriminatory

Since the petitioners have failed to show any damage or threat of loss from the Act it is unnecessary to consider whether, if such damage had been shown it would have been attributable to unconstitutional, arbitrary, or unreasonable discrimination resulting from this Act. It may be worth while to point out, however, that the provision for the selection of markets for inspection and grading is thoroughly reasonable, is not arbitrary, and does not

infringe the due process clause of the Fifth Amendment.

It is clear that a Federal regulation of commerce is not *per se* a violation of the due process clause merely because it applies in some places and not in others. There is no provision in the Constitution which requires Congress to exercise its power to regulate interstate commerce with complete geographical uniformity. See *Clark Distilling Co. v. Western Maryland Railway Co. et al.*, 242 U. S. 311, 326, 327; *Cooley v. Board of Wardens et al.*, 12 How. 298, 318. See also *In re Rahrer*, 140 U. S. 545; *Kentucky Whip and Collar Co. v. Illinois Central Railroad*, 299 U. S. 334; *Whitfield v. Ohio*, 297 U. S. 431, 434. "The Fifth Amendment unlike the Fourteenth has no equal protection clause." *Steward Machine Co. v. Davis*, 301 U. S. 548, 584. The due process clause may prohibit injurious discrimination, but it does not require the same equality of classification as does the equal protection clause of the Fourteenth Amendment. "Legislation by the Congress, which is subject to restraints less narrow and confining." *Steward Machine Co. v. Davis*, *supra*. See *Quong Wing v. Kirkendall*, 223 U. S. 59; *LaBelle Iron Works v. United States*, 256 U. S. 377. The due process clause affects a regulation which applies in some places and not in others only if the selection so discriminates against the persons in the area regulated as to cause them injury. If they are not injured, they cannot escape the regulation

on the ground that it is merely inoffensively selective. *Isbrandtsen-Moller Co. v. United States*, 300 U. S. 139. *Cusack Co. v. City of Chicago*, *supra*.

Furthermore, the provision of this Act requiring inspection initially on only a limited number of markets, if it be at all discriminatory, is nevertheless thoroughly reasonable. As we have pointed out heretofore, Congress found it impossible to provide for immediate inspection of all markets. Accordingly, it provided for inspection first, on only those markets where the largest number of growers could be benefited with the available facilities, contemplating that the service should be extended as rapidly as feasible to cover the entire field. It has never been assumed that the practical procedure of putting a statute into effect gradually instead of all at once, would in itself make the statute unconstitutional. Clearly, if there is discrimination here, it is discrimination which hurts no one and which is based on reasonable practical grounds.

The selection of the Oxford market by the Secretary of Agriculture pursuant to this policy was not an arbitrary choice. Growers selling on that market had been accustomed to having their tobacco graded by Government inspectors for a small fee under the service previously provided under the Farm Products Inspection Act (7 U. S. C. 492). It was determined that, being acquainted with the service, they were more likely to use it in large numbers than growers on other markets unacquainted with it. The fact that 94% of those who

voted in the referendum on the Oxford market favored the designation of that market strongly confirms that view.

Furthermore, this overwhelming majority of the growers voting in favor of inspection is a guarantee of its reasonableness. Congress is undoubtedly justified in ascertaining the sentiment of those to be regulated as to whether a regulation is suitable to them. Their opinion that they do not favor a regulation would fall far short of establishing that it is unreasonable. There might be many reasons why they prefer not to have it. But the opinion of the only people to be regulated that a regulation is desirable ought definitely to preclude any judgment of a court that such a regulation is arbitrary, capricious, or unreasonable. The only persons affected by this Act are the tobacco growers. It is they who cannot sell at auction unless they submit to grading and inspection. And it is they who have voted by a large majority in favor of the restraint thus put upon them. It takes an unusual measure of intellectual hardihood for a commission merchant to argue that a restraint upon his principals is unreasonable or arbitrary which the principals themselves have voted by so large a majority to accept. In *Borden's Co. v. Ten Eyck*, 297 U. S. 251, this Court said (p. 263):

The appellant cannot complain if, in fact, the discrimination embodied in the law is but a perpetuation of a classification created and existing by the action of the dealers.

It was thus recognizing the function of the opinions and practices of the people in making the law. There could be no better assurance that a regulation is reasonable than a preponderant vote favoring it cast by those regulated.

This test of reasonableness, intended to be an assurance against capricious or arbitrary imposition, is now sought to be turned by a series of legalistic arguments into constitutional infirmity by those commission merchants who seem to be of the opinion that their principals would not know when they were imposed upon.

The device is not a delegation of legislative powers, nor is it an interference in any way with the rights of the commission merchants. It is merely a safeguard against arbitrary application of the Act to markets where it would be unsuitable.

In summary, there is no constitutional requirement that a commerce regulation be absolutely uniform; there is nothing to show that the application of required inspection to the Oxford market under this Act caused injury to anyone, and particularly not to these petitioners. Moreover, there is nothing to show that it was unreasonable, arbitrary, or discriminatory, and much to show that it had none of these infirmities. There is a complete failure to show that this Act or its application to these petitioners violates the Fifth Amendment to the Constitution.

D. *The petitioners have failed to show the irreparable injury necessary to warrant the granting of equitable relief*

It is clearly evident from the previous discussion, pp. 75-83, *supra*, that the petitioners have completely failed to show that they have been damaged by this Act or that they were threatened with damage.

It is well established that the constitutionality of a statute cannot be attacked by one who fails to show that he has sustained or is in immediate danger of sustaining irreparable injury as a result of its enforcement. *Massachusetts v. Mellon*, 262 U. S. 447; *Spielman Motor Sales Co. v. Dodge*, 295 U. S. 89; *Hygrade Provision Co. v. Sherman*, 266 U. S. 497. The Court states the rule in *Massachusetts v. Mellon*, 262 U. S. at 488:

We have no power *per se* to review and annul acts of Congress on the ground that they are unconstitutional. That question may be considered only when the justification for some direct injury suffered or threatened, presenting a justiciable issue, is made to rest upon such an act. * * *

The party who invokes the power must be able to show not only that the statute is invalid but that he has sustained or is immediately in danger of sustaining some direct injury as the result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally.

The burden of proof is on the complaining party to establish the fact of injury. *Borden's Farm Products Co. v. Baldwin*, 293 U. S. 194, 209. The petitioners have clearly failed to sustain that burden in this case. They have failed to show any property right which is damaged or to which damage is threatened by this Act. They have even failed to show any threat of damage to the inchoate expectancy of future commissions. It is clear from the record that if they had complied with this Act, they would have avoided damage which they suffered through their resistance. They have shown no basis for injunctive relief against its provisions. The injunction they procured protects them only against a non-existent danger or, as events have proved, causes them damage.

In these circumstances, the only remaining ground upon which their assertion of a threat of damage may rest is the threat of prosecution for the violation of this Act, compliance with which would cause them no injury. We know of no case which gives to persons contemplating a criminal act the right to invoke the jurisdiction of a court of equity to prevent enforcement of that act when their compliance with it could do them no damage. The rule is clearly the other way. *Hygrade Provision Co. v. Sherman*, 266 U. S. 497, 500. See also *In re Sawyer*, 124 U. S. 200, 209, 211; *Davis & Farnum Manufacturing Co. v. Los Angeles*, 189 U. S. 207, 217.

The vicious results of such a doctrine are readily apparent. Criminal law would be enforced through

the defense of injunction suits. The cases in which courts of equity intervene to forestall enforcement of criminal penalties are cases where the person attacking the statute asserts and proves that he is faced with irreparable loss if he complies. If he may comply without damage, no reason is apparent why, if he wishes to test the validity of the penal provision, he should not raise the question by submitting to prosecution. No one has an inherent right to nullify an Act of Congress which does not hurt him, merely because he doesn't like to comply. That is all the petitioners ask here. They would have no right to equitable relief even if they had shown that they were threatened with prosecution.

But even their allegation of threat of prosecution has not been sustained. They allege such threats (R. 10, 14). The threats are denied (R. 58, 59, 61). The petitioners offered no proof that threats had been made. The allegation has not been proved and must be deemed to have been abandoned. On the state of the record they have failed to show any threat of immediate injury even from noncompliance. Accordingly they are left without even this asserted basis for equitable relief. Cf. *Spielman Motor Sales Co. v. Dodge*, *supra*; See *Ex parte La Prade*, 289 U. S. 444; *State of California v. Murray H. Latimer et al.*, No. 13, Original, October Term, 1938, decided December 5, 1938.³⁹

³⁹ Furthermore, inasmuch as petitioners have failed to prove threats by the individual defendants, this becomes, in substance, a suit against the United States which has not consented to be sued, and has not been made a party.

E. The petitioners have shown no basis for a declaratory judgment

The circumstances pointed out immediately above indicate that no actual controversy exists between the petitioners and the respondents within the meaning of the Declaratory Judgments Act. Petitioners say that they have alleged a controversy, and that the respondents have admitted it. It is apparent, in view of the failure of the petitioners to prove either a threat of prosecution or a threat of damage from compliance, that there exists not a justiciable issue but merely a difference of opinion between the petitioners and respondents as to whether the Tobacco Inspection Act is constitutional. See *Electric Bond & Share Co. et al. v. Securities & Exchange Commission et al.*, 303 U. S. 419, 443; *Ashwander v. Tennessee Valley Authority*, 297 U. S. 288, 324. See also *Massachusetts v. Mellon* (*supra*).

It might be said that the petitioners may have an interest adverse to that of the respondents in asserting their right to violate an Act with which they might comply without injury. The same might be said of any person anxious to violate with impunity any statute defining an offense and prescribing criminal penalties. We do not believe the Declaratory Judgments Act was intended to facilitate avoidance of regulation, beneficial to some and harmless to those who seek to avoid it, or to open the Federal courts to suits to test the constitution-

ality of legislation commenced by persons who sue for a declaration merely because they disagree with the policy such legislation makes effective. It has never been so applied. We submit that it should not be so construed.

CONCLUSION

The Tobacco Inspection Act as applied to the Oxford market is a valid exercise of the power of Congress to regulate interstate and foreign commerce. It is also a valid exercise in conjunction with the commerce power, of other powers specifically granted to Congress. It does not violate the Fifth Amendment or any other provisions of the Constitution. Furthermore petitioners have failed to establish either any legal interest entitling them to attack the constitutionality of the Act or to equitable relief, or any justiciable controversy as a basis for a determination under the Declaratory Judgments Act. The judgment of the Circuit Court of Appeals should be affirmed.

Respectfully submitted.

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DECEMBER 1938.

TOBACCO CLASSIFICATION AND INSPECTION

May 5, 1935.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed

Mr. FLANNAGAN, from the Committee on Agriculture, submitted the following

REPORT

[To accompany H. R. 8026]

The Committee on Agriculture, to whom was referred the bill (H. R. 8026) to establish and promote the use of standards of classification for tobacco, to provide and maintain an official tobacco inspection service, and for other purposes, having held extensive hearing, and having carefully considered same, report thereon with a recommendation that it do pass.

STATEMENT

This bill, which is known as "the Tobacco Inspection bill", provides for two general classes of inspection service. The first and most important is set forth in section 5, wherein the Secretary of Agriculture is authorized under certain conditions to designate markets on which tobacco shall be inspected and certified before sale at auction. The second is embodied in section 6, which provides for inspection, sampling, and weighing upon request of farmers, dealers, manufacturers, or others.

The first provision of the bill, which applies to tobacco sold on what are known as auction markets, has for its objects (1) the grading of the growers' tobacco by Government graders before sale so they will know what grades they are offering for sale, and (2) furnishing the growers with a daily and weekly market news service so they will know what the different grades of tobacco are bringing, and thus put them in position intelligently to accept or reject sales.

In order to understand the real objects of this first provision of the bill it is thought that a short statement of the present auction system of selling tobacco is in order. Tobacco is the only major farm crop which is sold at auction. In many localities, particularly in Virginia, North Carolina, South Carolina, Georgia, Florida, West Vir-

ginia, and Maryland, and in certain sections of Tennessee, Kentucky, Ohio, Indiana, and Missouri there is no other method of selling tobacco available to growers.

Tobacco, under the auction system as now conducted, is sold in baskets containing from 10 to 200 or more pounds. These baskets are placed upon the warehouse floor in long rows and the tobacco is sold to the highest bidder at public auction by the warehouseman, who operates on a fee or commission basis and who is supposed to represent the tobacco grower. The sales are made without the grades of the several lots being first determined and without the grower knowing what the same grades are bringing. The selling is extremely rapid, being at a rate, on most markets, of one basket every 10 seconds. The purchasers are the representatives of the tobacco companies and speculators, commonly called "pin-hookers", who are experts in the grades of tobacco. There are between 60 and 100 grades in a single type of tobacco, and it is not practical for a farmer to familiarize himself with the technical factors on which these grades are based, or to keep informed as to market prices without a definite system of Government grades.

Without any standard or guide, farmers sort their tobacco for market, as best they can, into lots of like quality, color, and length, which they commonly refer to as "grading." However, the farmer has no definite system of grades of his own, and the private grading systems used by the buyers are kept strictly confidential by them, so without Government standards the farmer has no definite guide for sorting his tobacco. Without a definite standard for sorting, or "grading" as the farmers call it, farmers generally are unable to class their tobacco correctly to meet the trade's demand. Buyers frequently refuse to bid on lots of tobacco due to the fact that it is not properly sorted. Improperly sorted lots of tobacco usually command a much smaller price as compared with prices paid for tobacco which is uniformly sorted into lots. Many lots of tobacco after being bought are re-sorted by the buyer into two or three different grades.

The possession of grade and price information by the buyers, and the lack of it on the part of the growers, places the growers under a severe handicap in the marketing of their tobacco and opens the way to abuses and practices by which farmers are victimized. The picture is simply this: Here is a farmer offering his tobacco for sale through a warehouse at the rate of a basket every 10 seconds, at public auction, to the highest bidder, without the grade being first established and without knowing what similar tobacco is bringing. On the other hand we have the purchaser who is an expert judge of tobacco, who has a well-established private system of grades, and who is in possession of all available information with respect to quality and price. It is the thought of the committee that if the purchaser needs an expert in grades in order to protect his interest in the sale the growers should be accorded the same protection.

Since it developed at the hearings on this bill that the farmer sentiment is not unanimous for compulsory grading service in certain districts where the farmers are not familiar with the operation of the service, the committee has incorporated in the present bill a referendum amendment which provides that no market shall be designated by the Secretary unless a majority of the growers voting favor it.

Under the bill as originally worded, it was felt by some that the Secretary would have authority to close markets which were not designated. The present bill includes a committee amendment which clarifies the original language and provides that nothing contained in the act shall be construed to prevent transactions in tobacco at markets not designated by the Secretary or at designated markets where the Secretary has suspended the requirement of inspection or to authorize the Secretary to close any market.

In order to clarify the provisions of section 6 of the bill, the committee adopted an amendment which is included in the present bill, which states that section 6 is intended merely to provide for the furnishing of services upon the request of the owner or other person financially interested in the tobacco to be sampled, inspected, and weighed and shall not be construed otherwise.

It has been assumed in some quarters that in operation this bill would injure the auction system. The committee does not hold this view. It does believe, however, that it would materially improve the position of the grower in the marketing of his crop, and to a marked degree would overcome some of the acknowledged weaknesses of the auction system. The following are given as specific instances:

(1) The wide variation in the price received by growers for the same grade of tobacco. This variation oftentimes runs from 25 to 200 percent the same day on the same market and for the same grade by the same buyer. It is believed that this is due largely to errors in judgment on the part of the buyers, and to the fact that the tobacco has not been graded before sale and the grower therefore does not know when he should reject an offer. If the grower knew the grade and the price it is bringing, he would be in a position to reject a sale if the offer was not in line with the current average for the grade. Under the tobacco-inspection bill the grower would be furnished with this information.

(2) Under the present system speculators, commonly known as "pinhookers", operate on every market. Some warehousemen, although claiming to represent the farmer, also indulge in this practice. These speculators, who are experts in tobacco grades, take advantage of opportunities to buy tobacco at less than its real value. They then resell the tobacco, usually in the same warehouse but at a later date, for a profit. They are able to buy the tobacco at a bargain because the grower does not know the grade. The profit made by the "pinhooker" and the speculating warehouseman rightfully belongs to the grower. It is believed the grading bill would practically eliminate this class of speculators.

(3) Another criticism of the present system is that "warehouse pets"—usually large growers and men of influence—are to be found on every market and receive favored treatment at the expense of less fortunate growers. That is to say, these "pets" stand in with warehousemen and buyers, and usually receive prices for their tobacco in excess of the prevailing price level. Then when the small growers' tobacco is offered for sale the price is hammered down and the small grower receives a lower price in order to pay the "pet" and maintain the average price level.

It is believed that the inspection bill will largely eliminate these evils.

Some of the benefits resulting to the grower under the bill are believed to be—

(a) That the application of tobacco-inspection service would have a marked influence in bringing about a more uniform price for tobacco of like quality.

(b) That the possibility of speculators making large profits by buying tobacco in the auction and reselling it to the buyers would be greatly reduced, and as evidence of this fact speculators generally and some warehousemen strongly oppose the official inspection of tobacco.

(c) That buyers are not so likely to overlook a pile of good tobacco in the auction sale if the standard grade is announced during the sale.

(d) That the standard grade placed on a lot of tobacco together with the daily and weekly tobacco price reports would give farmers a definite guide which can be used by them in determining whether or not to accept bids offered. With such information, a farmer is not likely to accept a bid which is materially below the market price.

(e) That auction warehousemen by using the standard grades and market news quotations would be better able to name an opening bid which would result in tobacco selling for a better and more uniform price.

(f) That the standard grades will serve as a guide to farmers in sorting their tobacco for market. Such grades form the foundation upon which farmers generally can be instructed in the classing of their tobacco, and statistics on the average prices by grades show conclusively the advantages of proper sorting. The larger buying firms have expressed their general approval of educational work along these lines, which would be of benefit to the farmers as well as the buyers.

(g) Where one or more baskets of damaged tobacco appear during a sale, apprehension that there may be more such tobacco frequently restricts bidding on other lots. Since damaged tobacco is officially graded as such, the grade should serve to reassure buyers as to the soundness of other tobacco on the sale.

(h) Similarly any question as to whether tobacco is in safe-keeping order would be largely eliminated by inspection, since all tobacco found upon inspection to be in doubtful keeping order is clearly indicated by the standard grade.

(i) That the standard grade placed on a lot of tobacco by a competent but disinterested person does influence the judgment of buyers, and such grade would ordinarily more truly represent the facts than could be gained through competitive buyers or others.

(j) That when the standard grades are clearly announced in an auction, buyers who do not have sufficient time to make a complete examination of the lot can depend upon the accuracy of the information shown by the standard grade. Therefore, in spite of the speed of the sale, buyers would feel safe in placing their bid.

(k) That when tobacco is sold under improper or unfavorable light the buyers do not have sufficient time to take samples to other portions of the warehouse where the light is suitable for the proper determination of quality and color. Whereas in the case of officially inspected tobacco the graders, who perform their work more deliberately, have time to take such samples to the proper light before making their determinations. Therefore, the standard grade in such a case will serve as a reliable guide to buyers.

(1) That farmers through the general application of tobacco inspection would not be placed in the position of hauling their tobacco to market to find a blocked sale resulting in lower prices, as farmers generally would be advised through market news releases and daily prices as to such conditions.

The Secretary of Agriculture in his report to the committee on the tobacco inspection bill made the following statement:

The inspection of tobacco by disinterested official inspectors on the basis of uniform standards at the time it is offered for sale is a service which the tobacco grower has long needed. As your committee is aware, specific legislation has been in effect for many years providing for the establishment by this Department of standards for grain and cotton and the inspection and classification of those commodities. The Bureau of Agricultural Economics has also been conducting for many years an extensive inspection and grading service for fruits and vegetables, meats, butter, cheese, poultry, eggs, beans, hay, and several other farm products. Although one of our important farm products, it was not until the fiscal year beginning July 1, 1929, that the Agriculture Appropriation Act was amended and a small appropriation made for that Bureau to inaugurate a similar grading service for tobacco. Like all such services it has had to pass through a trial period during which technical and administrative problems could be worked out and during which time its usefulness could be determined. Satisfactory progress has been made and the positive value of the service to growers has been demonstrated.

Attention is also called to the following facts:

The Federal Trade Commission as far back as 1920 investigated the tobacco marketing system and recommended Federal grading. Under date of December 11, 1920, the Federal Trade Commission made a strong recommendation for Federal grading of tobacco, and in its report set forth numerous objections to the present system, among them being the objections above set forth.

Again on December 23, 1925, the Federal Trade Commission filed a report on "The American Tobacco Co. and the Imperial Tobacco Co.," and in this report also strongly urged Federal grading of tobacco. And again on May 14, 1931, the Federal Trade Commission filed a report of an investigation made by it pertaining to tobacco marketing and again strongly urged Federal grading.

COST

This bill places the cost of administration, as to compulsory grading service, on the Government. The reason for this is that tobacco is the only crop the entire domestic consumption of which is subject to taxation. The internal revenue tax on tobacco is one of the most important sources of Federal revenue, but the tobacco tax has a direct bearing on the welfare of the growers. If it were not for the heavy burden of taxes on tobacco, consumption would expand. Therefore, the growers would receive a greater return for the same volume of production, or would have a ready market for a large production. That is to say, the existence of the tax has a restricting influence on the market for tobacco and on the prices received by growers. Attention is called to the fact that the Government derives more in revenue from the taxes on tobacco products than the growers receive for the raw material, as is shown by the following figures from official sources.

Year	Revenue from sale of manufactured tobacco products (million dollars)	Gross returns to growers from sale of tobacco (million dollars)
1930	449	22
1931	444	23
1932	399	28
1933	401	29
1934	425	120

¹ Preliminary.

Under these circumstances the committee believes that the tobacco growers are entitled to special consideration and that they should be furnished inspection, where compulsory grading is required, and market news services for improving their marketing system without cost to themselves.

It has been estimated that the cost of administering the act would not exceed \$200,000 during the first year, due to the fact that the service could not be greatly expanded the first year. The cost would increase annually thereafter until all auction markets are covered. Officials of the Department of Agriculture estimate that the total cost of inspection service on all auction markets would not exceed \$750,000 which is less than one-fourth of 1 percent of the annual revenue derived by the Government from internal revenue taxes on tobacco.

The bill also provides under section 6 for the sampling, inspection, and weighing of tobacco not sold at auction upon the request of growers, cooperative associations, warehousemen, dealers, or other financially interested persons. This service would be conducted on a voluntary basis upon application of an interested person and could be carried on independently by this Department or in cooperation with States or other agencies. This feature of the bill merely provides permanent legislative authority for the same forms of tobacco-grading service now conducted by the Bureau of Agricultural Economics of this Department.

SUMMARY OF THE PROVISIONS OF THE BILL

Briefly the provisions of the tobacco inspection bill may be summarized by sections as follows:

Section 1 defines the terms "person, Secretary, inspector, sampler, weigher, tobacco, auction market, and commerce." Section 2 is a declaration of Congress regarding the sale of tobacco at auction. Section 3 authorizes (a) the investigation of tobacco marketing, and (b) the establishment of standards for tobacco. Section 4 authorizes the demonstration of tobacco standards by distributing samples and otherwise.

Section 5 authorizes the designation of auction markets to be graded upon a majority vote of farmers in a referendum, and provides (a) that after 30 days notice no tobacco shall be offered for sale at auction on a designated market until it shall have been inspected, (b) for suspending the requirements of inspection in certain emergencies, (c) that no fees or charges shall be made for inspection on a

designated market, and (d) that the Secretary shall not have the right to prevent transactions in tobacco on markets not designated or to close any market.

Section 6 provides for the sampling, inspection, and weighing of tobacco, upon request of the owner or other financially interested person, in cooperation with State or other agencies. This section gives the necessary authority to meet the demand for these services in storage warehouses and other places where tobacco is not sold at auction.

Section 7 provides for appeal inspections and, further, that inspection certificates issued under the act shall be received in all courts and by all officers and employees of the United States as prima facie evidence of the truth of the statements therein contained.

Section 8 requires auction warehousemen to provide a space on tickets or other tags or labels for statement of grade, in a form as the Secretary may prescribe. Section 9 authorizes the establishment of tobacco market news service. Section 10 designates certain acts as being unlawful.

Section 11 authorizes the Secretary to publish the facts regarding any violation of the act. Section 12 provides the penalty for persons found guilty of violating provisions of sections 5 and 10. Section 13 provides that corporations or other firms shall be jointly responsible for the acts of their employees within the scope of their employment. Section 14 authorizes the Secretary to make rules and regulations and to perform other duties he may deem necessary to effectuate the purposes of the act.

Section 15 authorizes the Secretary or employees designated by him to hold hearings, administer oaths, etc., in carrying out work authorized by the act. Section 16 provides that if any provision of the act is held invalid other provisions will not be affected thereby. Section 17 provides that duties under the act may be executed by representatives of the Department of Agriculture designated by the Secretary. Section 18 provides that the act may be cited as "The Tobacco Inspection Act."

SUPREME COURT OF THE UNITED STATES.

No. 275.—OCTOBER TERM, 1938.

D. T. Currin, S. M. Cutts, and H. A. Averett, doing business as Fleming Warehouse, Oxford, North Carolina, et al., Petitioners,

vs.

Henry A. Wallace, Secretary of Agriculture for the United States, et al.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fourth Circuit.

[January 30, 1939.]

Mr. Chief Justice HUGHES delivered the opinion of the Court.

Plaintiffs, tobacco warehousemen and auctioneers in Oxford, North Carolina, seek a declaratory judgment¹ that the Tobacco Inspection Act of August 23, 1935,² is unconstitutional and an injunction against its enforcement. The Circuit Court of Appeals, reversing the District Court,³ sustained the validity of the Act and directed the dismissal of the bill of complaint. 95 F. (2d) 856. We granted certiorari. October 10, 1938.

The Act states its scope and purpose. Secs. 1, 2. It applies to transactions involving the sale of tobacco at auction as commonly conducted at auction markets. These transactions are carried on by tobacco producers and by persons engaged in the business of buying and selling tobacco in commerce as defined, that is, in commerce which is interstate or foreign or is with or within the Territories or the District of Columbia.⁴ Congress finds that the classification of tobacco according to type, grade, and other characteristics affects the prices received; that "without uniform standards of classification and inspection the evaluation of tobacco is susceptible to speculation, manipulation and control" and "unreasonable fluctuations in prices and quality determinations oc-

¹ Declaratory Judgment Act, 45 Stat. 955.

² 49 Stat. 731; 7 U. S. C. Supp. III, 511 a-511 q.

³ 19 F. Supp. 211.

⁴ See Section 1.

cur", constituting a burden upon commerce; and that the use of uniform standards is imperative "for the protection of producers and others engaged in commerce and the public interest therein".

The Secretary of Agriculture is authorized to investigate the handling, inspection and marketing of tobacco and to establish standards by which its type, grade, size, condition, or other characteristics may be determined and these standards are to be the official standards of the United States. Secs. 3, 4.

The Secretary is authorized to designate those markets where tobacco bought and sold at auction or the products customarily manufactured therefrom move in commerce. He is not to designate a market unless two-thirds of the growers, voting at a prescribed referendum, favor it. The Act provides that after public notice that a market has been so designated, no tobacco shall be offered for sale at auction thereon until it has been inspected and certified by an authorized representative of the Secretary according to the established standards. There is a proviso that in case competent inspectors are not available or for other reasons the Secretary is unable to provide for such inspection and certification at all auction markets within a type area, he shall first designate those markets where the greatest number of growers may be served with the facilities available. Sec. 5.

Warehousemen must provide space on warehouse tickets or other tags or labels used by them for showing the grades as determined by an authorized inspector. Sec. 8. The Secretary is authorized to publish and distribute, without cost to the grower, timely information on the "market supply and demand, location, disposition, quality, condition, and marketing prices". Sec. 9. Violation of the requirement of inspection and certification at designated markets, is made a misdemeanor punishable by a fine of not more than \$1000 or imprisonment for not more than one year or both. Sec. 12.

The market practices which led to this enactment are disclosed by the record. They are described at length in the Report of the Committee on Agriculture of the House of Representatives on the submission of the bill.⁵ The growers sort their tobacco for market as best they can. It is tied in bundles or "hands" and brought to the auction warehouse where it is put in baskets, weighed, and

⁵ Report, Committee of Agriculture, June 5, 1935, to accompany H. R. 8026.

placed in rows on the warehouse floor with a ticket on each pile. The warehousemen auction the tobacco, acting as representatives of the growers and receiving fees at rates fixed by the state law. The auction goes forward with extreme rapidity—about one basket every ten seconds—the auctioneer proceeding along one side of a row and the buyers moving with him. The auction is conducted with a technical vocabulary intelligible only to the initiated, bids being made by well-understood gestures. The sale is not completed until the grower accepts the bid; he may decline the bid and take his tobacco away. The bidders are representatives of tobacco companies and speculators who are experts in grades.⁶ The Committee reported that "The possession of grade and price information by the buyers and the lack of it on the part of the growers, places the growers under a severe handicap in the marketing of their tobacco and opens the way to abuses and practices by which farmers are victimized. . . . It is the thought of the committee that if the purchaser needs an expert in grades in order to protect his interest in the sale, the growers should be accorded the same 'protection'". It also appears from the record that because of the speed of the sale few buyers have the opportunity to make a satisfactory examination of the tobacco and consequently many errors are made, although on the average the buyers are not supposed to suffer seriously. The effect of the methods used is to introduce an unusual degree of uncertainty in the prices which a grower may receive for tobacco of any particular grade.

Under the operation of the Act federal inspectors examine the tobacco about an hour before the sale. They pull samples from each pile and place tickets indicating the grade. Each day there is displayed in the warehouse a report indicating the average price for the government grades sold on the previous day, and weekly reports are issued for the preceding week.

The Secretary promulgated regulations to be effective January 2, 1936. Later, official standard grades for flue-cured tobacco were prescribed. The Secretary designated twenty-three markets throughout the country for compulsory inspection and grading. In North Carolina tobacco was marketed on forty auction markets. Three of these, at Oxford, Goldsboro, and Farmville, were design-

⁶ The methods are similar to those followed in Georgia as described in *Townsend v. Yeomans*, 301 U. S. 441, 445.

nated.⁷ In view of the lack of expertly trained inspectors and graders, all markets in North Carolina could not be designated and defendants say that the markets above named were selected because in previous years the Department had established at these places voluntary inspection of tobacco under the Farm Products Inspection Act⁸ and the growers were familiar with the benefits accruing from the federal action.

In relation to Oxford, the market here in question, the required referendum was had. Upwards of 8600 ballots were distributed to growers who had sold on that market during the previous season; 1896 ballots were returned, of which 1782 were in favor of the designation. There were 248 other ballots returned, of which 96 per cent were favorable.

Plaintiffs contend (1) that the transaction of offering tobacco for sale at auction on the warehouse floor is not a transaction in interstate commerce and hence is not subject to congressional regulation; (2) that the Act is invalid because of its discriminatory character; (3) that the Act provides for an unconstitutional delegation of legislative power, and (4) that the Act violates the due process clause of the Fifth Amendment.

The Circuit Court of Appeals found, and the record supports the finding, that there is an actual controversy between plaintiffs and defendants, entitling plaintiffs to invoke the Declaratory Judgment Act. See *Aetna Life Insurance Company v. Haworth*, 300 U. S. 227, 240, 241.

First.—Plaintiffs urge that tobacco “is not inherently an interstate commodity”; that the auction transaction is not a sale as title is not passed until the grower accepts the price; that after the auction the grower may, and often does, reject the bid and he may take his tobacco away; that the inspection required by the Act is done prior to the offering for sale; and that until sale and delivery to the purchaser the tobacco is not in interstate commerce and its control is reserved to the State. These objections are untenable. The record shows that the sales consummated on the Oxford auction market are predominantly sales in interstate and foreign commerce. The principal purchasers are few in number and in the main are engaged in the export trade or in the manu-

⁷ A referendum was also had at Smithfield which resulted unfavorably.

⁸ 7 U. S. C. 492.

facture of tobacco products in other States. It appears that in a given week, shortly before the beginning of this suit, approximately 2,000,000 pounds of tobacco were sold on the Oxford market, only 15.3 per cent. of which were definitely destined for manufacture in North Carolina. About 14 per cent. were in part for manufacture in North Carolina and in part for other States, and about 62 per cent. moved directly into foreign commerce. The fact that the growers are not bound to accept bids, and in certain instances reject them, does not remove the auction from its immediate relation to the sales that are consummated upon the offers that the growers do accept. The auction in such cases is manifestly a part of the transaction of sale. So far as the sales are for shipment to other States or to foreign countries, it is idle to contend that they are not sales in interstate or foreign commerce and subject to congressional regulation. Where goods are purchased in one State for transportation to another the commerce includes the purchase quite as much as it does the transportation. *Swift & Co. v. United States*, 196 U. S. 375, 398, 399; *Dahnke-Walker Milling Co. v. Bondurant*, 257 U. S. 282, 290, 291; *Lemke v. Farmers Grain Co.*, 258 U. S. 50, 54; *Stafford v. Wallace*, 258 U. S. 495, 519; *Flanagan v. Federal Coal Co.*, 267 U. S. 222, 225; *Shafer v. Farmers Grain Co.*, 268 U. S. 189, 198; *Foster Packing Co. v. Haydel*, 278 U. S. 1, 10.

There is no permissible constitutional theory which would apply this principle to purchases of livestock as in the *Swift* and *Stafford* cases, and of grain as in the *Lemke* and *Shafer* cases, and deny its application to tobacco. In the *Lemke* case (*supra*, at pp. 60, 61), condemning the effort of a State to control the buying of grain for shipment to other States, the Court referred to the power of Congress to provide its own regulation for such transactions, saying: "It is alleged that such legislation is in the interest of the grain growers and essential to protect them from fraudulent purchases, and to secure payment to them of fair prices for the grain actually sold. This may be true, but Congress is amply authorized to pass measures to protect interstate commerce if legislation of that character is needed". And again, in the *Shafer* case (*supra*, at pp. ~~189, 199~~), the Court said: "The right to buy it [grain] for shipment, and to ship it in interstate commerce is not a privilege derived from state laws and which they may fetter with conditions, but is a common right, the regulation of which is committed

198, 199

to Congress and denied to the States by the commerce clause of the Constitution".

The fact that intrastate and interstate transactions are commingled on the tobacco market does not frustrate or restrict the congressional power to protect and control what is committed to its own care. As we said in the *Shreveport* case, 234 U. S. 342, 351, 352, with respect to the intrastate rates of interstate carriers—"Wherever the interstate and intrastate transactions of carriers are so related that the government of the one involves the control of the other, it is Congress, and not the State, that is entitled to prescribe the final and dominant rule, for otherwise Congress would be denied the exercise of its constitutional authority and the State, and not the Nation, would be supreme within the national field". See, also, *Minnesota Rate Cases*, 230 U. S. 352, 399; *Wisconsin Railroad Commission v. Chicago, B. & Q. R. Co.*, 257 U. S. 563, 588; *Stafford v. Wallace*, *supra*, at p. 522. Here, the transactions on the tobacco market were conducted indiscriminately at virtually the same time, and in a manner which made it necessary, if the congressional rule were to be applied, to make it govern all the tobacco thus offered for sale.

Having this authority to regulate the sales on the tobacco market, Congress could prescribe the conditions under which the sales should be made in order to give protection to sellers or purchasers or both. Congress is not to be denied the exercise of its constitutional authority in prescribing regulations merely because these may have the quality of police regulations. It is on that principle that misbranding under the Food and Drugs Act⁹ embraces false or misleading statements as to the ingredients of commodities or the effects of their use. See *Seven Cases v. United States*, 239 U. S. 510. Inspection and the establishment of standards for commodities has been regarded from colonial days as appropriate to the regulation of trade, and the authority of the States to enact inspection laws is recognized by the Constitution. Art. I, sec. 10, par. 2. See *Turner v. Maryland*, 107 U. S. 39, 51-54; *Pacific States Company v. White*, 296 U. S. 176, 181. But the inspection laws of a State relating to exports or to articles purchased for shipment to other States are subject to the paramount regulatory power of Congress. *Turner v. Maryland*, *supra*, at pp. 57, 58. And Con-

⁹ 21 U. S. C. 10.

gress has long exercised this authority in enacting laws for inspection and the establishment of standards in relation to various commodities involved in transactions in interstate or foreign commerce.¹⁰ The fact that the inspection and grading of the tobacco take place before the auction does not dissociate the former from the latter, but on the contrary it is obvious that the inspection and grading have immediate relation to the sales in interstate and foreign commerce which Congress thus undertakes to govern.

In *Townsend v. Yeomans*, 301 U. S. 441, we recently had under consideration the legislation of Georgia prescribing maximum charges for the services of tobacco warehousemen who conducted their business in a manner similar to that prevailing in North Carolina. There, the warehousemen strongly insisted that they were engaged in interstate and foreign commerce, as the tobacco sold on their floors was destined for interstate or foreign shipment, and hence that the State was without power to fix their fees. They invoked the federal Act in support of their contention. But we found nothing in the federal Act which undertook to regulate the charges of warehousemen and hence we concluded that Congress had restricted its requirements and left the State free to deal with the matters not covered by the federal legislation and not inconsistent therewith. The authority of Congress to enact the Tobacco Inspection Act was not questioned.

Second.—Plaintiffs complain that the Act is discriminatory. They say that warehousemen on other tobacco markets in North Carolina, doing the same sort of business and competing for patronage among the same growers, are at liberty to conduct sales in their warehouses without inspection and certification.

The reason for the selection is shown. The lack of a sufficient number of expert inspectors made it impracticable to supply inspection and grading at all tobacco auction markets. Having this practical difficulty in mind, Congress directed that when for that reason or others the Secretary was unable to provide for inspection and certification at all such markets within a type area, he should first designate those where the greatest number of growers may be

¹⁰ See, e. g., United States Cotton Standards Act, 7 U. S. C. 51-65; Food and Drugs Act, 21 U. S. C. 14a, 15, 20, 41, 71, 74, 89, 143; United States Warehouse Act, 7 U. S. C. 243; Certification of condition, etc. of agricultural products shipped in interstate commerce, 7 U. S. C. 414; Farm Products Inspection Act, 7 U. S. C. 492; Perishable Agricultural Commodities Act, 7 U. S. C. 499a.

served with the facilities that are available. Sec. 5. We do not doubt that such a selection was within the congressional power.

We have repeatedly said that the power given to Congress to regulate interstate and foreign commerce is "complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the constitution". *Gibbons v. Ogden*, 9 Wheat. 1, 196. To hold that Congress in establishing its regulation is restricted to the making of uniform rules would be to impose a limitation which the Constitution does not prescribe. There is no requirement of uniformity in connection with the commerce power (Art. I, sec. 8, par. 3) such as there is with respect to the power to lay duties, imposts and excises (Art. I, sec. 8, par. 1). *Clark Distilling Co. v. Western Maryland R. Co.*, 242 U. S. 311, 327. Undoubtedly, the exercise of the commerce power is subject to the Fifth Amendment (*Monongahela Navigation Co. v. United States*, 148 U. S. 312, 336; *United States v. Cross*, 243 U. S. 316, 326; *Louisville Bank v. Radford*, 295 U. S. 555, 589); but that Amendment, unlike the Fourteenth, has no equal protection clause. *Le-Belle Iron Works v. United States*, 256 U. S. 377, 392; *Steward Machine Co. v. Davis*, 301 U. S. 548, 584.

If it be assumed that there might be discrimination of such an injurious character as to bring into operation the due process clause of the Fifth Amendment, that is a different matter from a contention that mere lack of uniformity in the exercise of the commerce power renders the action of Congress invalid. For that contention we find no warrant. It is of the essence of the plenary power conferred that Congress may exercise its discretion in the use of the power. Congress may choose the commodities and places to which its regulation shall apply. Congress may consider and weigh relative situations and needs. Congress is not restricted by any technical requirement but may make limited applications and resort to tests so that it may have the benefit of experience in deciding upon the continuance or extension of a policy which under the Constitution it is free to adopt. As to such choices, the question is one of wisdom and not of power.

Third.—The argument that there is an unconstitutional delegation of legislative power is equally untenable. This is not a case where Congress has attempted to abdicate, or to transfer to others, the essential legislative functions with which it is vested by the

Constitution. Art. I, sec. 1; sec. 8, par. 18. See *Panama Refining Co. v. Ryan*, 293 U. S. 388, 421; *Schechter Corporation v. United States*, 295 U. S. 529, 541, 542, 553. We have always recognized that legislation must often be adapted to conditions involving details with which it is impracticable for the legislature to deal directly. We have said that—"The Constitution has never been regarded as denying to the Congress the necessary resources of flexibility and practicality, which will enable it to perform its function in laying down policies and establishing standards, while leaving to selected instrumentalities the making of subordinate rules within prescribed limits and the determination of facts to which the policy as declared by the legislature is to apply. Without capacity to give authorizations of that sort we should have the anomaly of a legislative power which in many circumstances calling for its exertion would be but a futility". *Panama Refining Co. v. Ryan*, *supra*. In such cases "a general provision may be made, and power given to those who are to act under such general provisions to fill up the details". *Wayman v. Southard*, 10 Wheat. 1, 43. We think that the Tobacco Inspection Act belongs to that class.

So far as growers of tobacco are concerned, the required referendum does not involve any delegation of legislative authority. Congress has merely placed a restriction upon its own regulation by withholding its operation as to a given market "unless two-thirds of the growers voting favor it". Similar conditions are frequently found in police regulations. *Cusack Company v. City of Chicago*, 242 U. S. 526, 530. This is not a case where a group of producers may make the law and force it upon a minority (see *Carter v. Carter Coal Co.*, 298 U. S. 310, 318) or where a prohibition of an inoffensive and legitimate use of property is imposed not by the legislature but by other property owners (see *Washington ex rel. Seattle Trust Co. v. Roberge*, 278 U. S. 116, 122). Here it is Congress that exercises its legislative authority in making the regulation and in prescribing the conditions of its application. The required favorable vote upon the referendum is one of these conditions. The distinction was pointed out in *Hampton & Company v. United States*, 276 U. S. 407, where, in sustaining the so-called "flexible tariff provision" of the Act of September 21, 1922,¹¹

¹¹ 42 Stat. 853, 941, 942.

and the authority it conferred upon the President, we said: "Congress may feel itself unable conveniently to determine exactly when its exercise of the legislative power should become effective, because dependent on future conditions, and it may leave the determination of such time to the decision of an Executive, or, as often happens in matters of state legislation, it may be left to a popular vote of the residents of a district to be effected by the legislation. While in a sense one may say that such residents are exercising legislative power, it is not an exact statement, because the power has already been exercised legislatively by the body vested with that power under the Constitution, the condition of its legislation going into effect being made dependent by the legislature on the expression of the voters of a certain district".

Nor is there an unconstitutional delegation to the Secretary of Agriculture. Congress has set forth its policy for the establishment of standards for tobacco according to type, grade, size, condition, and other determinable characteristics. Secs. 3, 4. The provision that the Secretary shall make the necessary investigations to that end and fix the standards according to kind and quality is plainly appropriate and conforms to familiar legislative practice as shown by the various statutes already mentioned.¹² It is not different in principle from the authority conferred upon the Secretary of the Treasury to establish "uniform standards of purity, quality and fitness for consumption of all kinds of teas imported into the United States" (*Buttfield v. Stranahan*, 192 U. S. 470, 494), or from that conferred upon the Interstate Commerce Commission to fix standards for safety devices and equipment (*St. Louis & Iron Mountain R. Co. v. Taylor*, 210 U. S. 281, 286, 287; *Napier v. Atlantic Coast Line*, 272 U. S. 605, 612), or from that conferred upon the Secretary of War to determine whether bridges and other structures constitute unreasonable obstructions to navigation and to specify and prescribe the structural changes that are required (*Union Bridge Co. v. United States*, 204 U. S. 364).

The Secretary of Agriculture is authorized to designate those markets where tobacco bought and sold thereon at auction moves in commerce. Sec. 5. This calls for the ascertainment of a fact. The intention of Congress is clear that markets thus ascertained shall be designated subject to the prescribed conditions and as rapidly

¹² See Note 10.

as facilities for inspection are available. We find no unfettered discretion lodged with the administrative officer. The requirement of a referendum, as already noted, calls for the expression of the wishes of the growers and the Secretary acts merely as an administrative agent in conducting the referendum. The provision for the suspension of a designated market because competent inspectors are not available or the quantity of tobacco is not enough to justify the cost of the service, sets forth definite as well as reasonable criteria. The statute also lays down a practical rule for the guidance of the Secretary in the selection of markets in the event that because of lack of inspectors or other reasons the Secretary is unable to furnish inspection and certification at all auction markets within a type area. In that case he is first to designate those auction markets "where the greatest number of growers may be served with the facilities available to him".

The statute thus defines the policy of Congress and establishes standards within the framework of which the administrative agent is to supply the details. The provisions of the Act are well within the principle of permissible delegation which we applied in relation to the administration of the forest reserve in *United States v. Grimaud*, 220 U. S. 506, 517; to the allocation of licenses, wave lengths, etc. in *Federal Radio Commission v. Nelson Bros. Co.*, 289 U. S. 266, 285; and to the exercise of the powers conferred upon the Interstate Commerce Commission in *New York Central Securities Corporation v. United States*, 287 U. S. 12, 24.

Nor does it appear that, in his use of his authority in the instant case, the Secretary has acted in an arbitrary and capricious manner. As he did not have an adequate corps of experts to supply all the North Carolina markets, he selected those where there had been voluntary inspection under the prior Act.¹³ It cannot be said that this was an unreasonable course.

Fourth.—Finally, plaintiffs invoke the due process clause of the Fifth Amendment. Plaintiffs are warehousemen and auctioneers acting as agents for the growers who own the tobacco and pay their commissions. Plaintiffs are thus in the position of contesting a regulation for the benefit of their principals because of an alleged interference with their business. The Act does not affect their rate of charges and does not deprive them of any property.

¹³ Farm Products Inspection Act, 7 U. S. C. 492.

The growers, to be sure, may take their tobacco where they please. But even if it were assumed that the contention that the markets subject to the inspection provision would lose patronage could afford ground for resisting this sort of regulation, otherwise valid, the claim in this instance rests more on conjecture than on proof. We agree with the Circuit Court of Appeals that as to the asserted difference of prices obtainable on inspected markets, as compared with those not inspected, the evidence has little probative value and that the loss of business from growers who do not desire the inspection would seem by the record to be more than counterbalanced by the gain of business from those who desire it. 95 F. (2d) p. 861.

The decree of the Circuit Court of Appeals is affirmed.

Affirmed.

Mr. Justice McREYNOLDS and Mr. Justice BUTLER dissent.

A true copy.

Test:

Clerk, Supreme Court, U. S.